Ranjit Krishna Pramanik, 45 DLR 660, Abdul Khaleq vs State, 45 DLR 75, Jamshed Ahmed vs State 14 BLD 301, Malai Miah vs State, 13 BLD 277, State vs Mafiz Uddin, 10 BLC 93, Mazibor Rahman vs State, 10 BLC 183. In the instant case trial Court committed error in convicting Masum Sikder only because he absconded. His conviction is not founded on any legal evidence. So he is entitled to get acquittal.

49. Considering the tender age of accused Ripan and Hanif and the facts that before commission of the offence accused Ripan gave fists and blows to the deceased and for that the deceased complained against Ripan and for that Ripan and Hanif assaulted the deceased to death, we are of the view that justice will be met if the sentence of death awarded to Ripan and Hanif is committed to imprisonment for life with fine.

50. In the result, the reference is rejected. The Criminal Appeal No. 3216 of 2004 is dismissed. The impugned judgment and order so far as it relates to accused Ripan Howlader and Hanif Howlader is affirmed with modification to the effect that accused Ripan Howlader and Hanif Howlader are sentenced to suffer imprisonment for life and to pay a fine of Taka 5,000 each, in default to suffer rigorous imprisonment for 3 (three) months more.

51. Criminal Appeal No. 3437 of 2004 is allowed. There impugned judgment and order of conviction and sentence so far it relates to accused Masum Sikder is hereby set aside. Accused Masum Sikder is acquitted of the charge leveled against him. He be set at liberty at once if not wanted in any other connection. The Jail Appeal No. 924 of 2004 is accordingly disposed of.

Send down the lower Court's records at once.

Ed.

High Court Division
(Special Original Jurisdiction)

Md Ashfaqul Islam J
Mustafa Zaman Islam J

Judgment
January 18th, 2012.

Amzad Hossain .....
.....Petitioner
vs
Bangladesh Bank and others.....
.....Respondents*

Constitution of Bangladesh, 1972
Article 102(2)

Natural Justice—There has been no violation of principle of natural justice as it appears to us since there had been a sequential of post decisional hearing availed of by the petitioner with the respondents which started right after the passing of the impugned order. .....(26)

Post Decision Hearing

Failure to issue notice may not be fatal where the person complaining was aware of the proceeding and took steps to file his objection as it has happened. .....(25)

Bangladesh Telecom Pvt Ltd vs Bangladesh T&T Board, 48 DLR (AD) 20, Chittagong Medical vs Shahrayer Murshed, 48 DLR (AD) 33, Helaluddin Ahmed vs Bangladesh, 45 DLR (AD); Jamuna Oil Company Ltd vs SK Dey, 44 DLR (AD) 104; Maneka Gandhi vs Union of India 2 SCR (1978) 621, Canara Bank vs VK Awasthy, 6 Supreme Court Case 2005 321, Charan Lal Shahu vs Union of India AIR 1990 (SC) 1480; Bangladesh vs Professor Golam Azam 46 DLR (AD)192; Charan Lal Sahu vs Union of India AIR 1990 (SC) 1480; Abdul A'la Moudoodi vs West Pakistan, 17 DLR (SC) 209, Farid sons Ltd vs

*Writ Petition No. 2528 of 2005.

Pakistan 13 DLR (SC) 233 and Swadeshi Cotton Mills vs India AIR 1981 SC 818 ref.

AM Amin Uddin with Munshi Moniruzzaman, Advocates—For the Petitioner.

Fornakh Rahman, Advocate—For the Respondent No. 1.

Judgment

Md Ashfaqul Islam J : At the instance of the petitioner, Amzad Hossain, this Rule Nisi was issued calling upon the respondents to show cause as to why the impugned Memo No. Baimuni (LD A-1) 144/278/2004-677 dated 4-4-2004 (Annexure-D) cancelling the Money Changer License of the petitioner issued by Foreign Exchange Policy Division, Bangladesh Bank at the signature of the respondent No. 4 should not be declared to have been made and issued without lawful authority and is of no legal effect.

2. The background leading to the Rule, in short, is that the petitioner was granted a Money Changer License under section 3 of Foreign Exchange Regulation Act, 1947 (in short Act, 1947) in the name of his proprietorship firm "Universal Money Changer" issued by the respondent No. 3, Deputy General Managers, Foreign Exchange Policy Division, Bangladesh Bank dated 18-9-1997 to buy and sale foreign currency from the incoming and outgoing passengers. The said license was issued on yearly basis subject to renewal on yearly basis subject to renewal on yearly basis subject to renewal on yearly basis which was renewed up to 17-9-2003.

3. The respondent No. 3 issued FE Circular No. 3/2002 dated 19-2-2002 providing guide lines relating to renewal of Money Changer License, release of foreign currency, change of address etc. The said circular provided for transaction of foreign currency fixing an yearly target of 2.50 lakhs US Dollar for each Money Changer. In case of failure, Money Changer License for the following year would not be considered. It has been provided that for unavoidable circumstances if any Money Changer fails to fulfill yearly target, renewal of License for the following year would be considered on written undertaking that the concerned Money Changer would fulfill the target. This opportunity will be available to the concerned Money Changer for once during its entire business period.

4. The petitioner submitted an application on 14-10-2003 along with original Money Changer License (Annexure-A), requisite fees and relevant papers in the office of the respondents for renewal of his Money Changer License for the next year commencing from 18-9-2003 (Annexure-C). Bangladesh Bank issued Memo dated 4-4-2004 at the signature of the respondent No. 4, Assistant Director Policy Division, Bangladesh Bank stating as the petitioner failed to fulfill the yearly target of foreign currency transaction in terms of FE Circular No. 3 of 2002 dated 19-2-2002 there was no scope to renew his Money Changer License as the transaction of foreign currency of the petitioner's firm in the year 2003 was 2.02 lakhs US Dollar which is far below of the fixed target and in exercise of the power conferred by section 3(2)(iii) of Act, 1947 the Money Changer License of the petitioner was cancelled with a direction to delivery his original Money Changer License and the foreign currency in hand, if any, to Foreign Exchange Policy Division, Bangladesh Bank. The petitioner has challenged this decision of Bangladesh Bank and obtained the present rule.

5. Mr Munshi Moniruzzaman, the learned Counsel appearing for the petitioner after placing the petition and the relevant Annexures with it mainly argued that the respondents without issuing any notice upon the petitioner violated the principle of Natural Justice without giving any hearing and most arbitrarily cancelled the license of the petitioner by the

impugned order (Annexure-D) which should be declared to have been made and issued without lawful authority and without any legal effect. In elaborating his contention the learned Counsel further submits that the petitioner has transacted foreign currency to the extent of 2,66,332 US Dollar as per statements vide (Annexure-E) during 18-9-2002 to 18-9-2003 and thereby fulfilled more than the target of 2.50 lakhs US Dollar fixed by FE Circular dated 19-2-2002 (Annexure-B). The respondents without taking any notice of the same illegally and arbitrarily cancelled the Money Changer License of the petitioner.

6. The petitioner in the Writ Petition has given a detail and date-wise statement of facts about the steps that he had taken after passing of the impugned order. He further submitted that right after issuing of the impugned order the petitioner made representation to the respondent No. 2, General Manager, Foreign Exchange Policy Division, Bangladesh Bank for renewal of his license. Thereafter, the petitioner had been continuously persuading the respondents, to get his license renewed and lastly he made a similar representation on 8-3-2005 (Annexure-G). But the respondents informed him that the cancellation of his license would not be withdrawn. He was then directed not to make any further representation.

7. Mr Munshi Moniruzzaman, mainly on the ground of violation of Natural Justice mooted his argument relying on the decision of Bangladesh vs Tajul Islam reported in 49 DLR (AD) 177. Highlighting the observations made in that decision he submits that license is a legal privilege granted under law and not a charity and a show cause notice is not a technical requirement or an idle ceremony, it is a mandate. The notice must not be vague or in bare language merely repeating the language of the statute. The notice must be clear and containing facts of allegation giving an opportunity of being heard to the petitioner. He brought to our notice the paragraph of 21 of the said decision wherein their Lordships of the Appellate Division observed;

> "A license in a commercial sense is not a charity done to a person but a privilege accorded generally on payment of a fee. Under section 10 of the Ordinance the licensee is required to pay "such security and fee as many be prescribed." The respondent paid taka 5 lakh as security which was liable to be forfeited upon cancellation of the license. So, the cancellation of a license is a serious matter adversely touching a person's pecuniary interest, more than that, it affects the fundamental right of a citizen to conduct any lawful trade or business subject to certain restrictions imposed by law. The Court would always insist that the authority exercising such a drastic power of cancellation acts strictly according to law and always with fairness."

8. Mr Munshi also cited the decision of *Bangladesh Telecom Pvt. Ltd. vs Bangladesh Telecom Board and others, 48 DLR (AD) 20, Chittagong Medical vs Shahrayer Murshed, 48 DLR (AD) ..., Helaluddin Ahmed vs Bangladesh, 45 DLR (AD) ... and Jamuna Oil Company Ltd vs SK Dey, 44 DLR (AD) 104* on the point. Sum and substance of his argument is that the respondents without affording him any opportunity of being heard has violated the age old and consistent view of the Appellate Division concerning the 'Natural Justice'.

9. Mr Forrukh Rahman, the learned Counsel appearing for the respondent Bank on the other hand opposes the Rule and submits that this Division in exercising its jurisdiction under writ certiorari has a limited scope to go into details of the factual aspect that has not been brought before by both sides. In paragraph ... of the Supplementary Affidavit the learned Counsel specifically stated that under the ...

Bangladesh Bank the petitioner is required to target as per FE Circular No. 3/2002 annexure B) to the petition. That being not fulfilled by the petitioner the respondent in exercise of his power under section 3(2)(iii) of 1947 rightly cancelled the license of the petitioner.

There is no provision in the Act of giving any prior notice to the petitioner before cancelling the license. As a result, the license was not renewed by the respondents and the respondents were not obliged to give any show cause notice before taking any decision over the matter. He further submits that the petitioner only after the cancellation of his license made a representation and thereafter almost over a period of one year he made several correspondences with the respondents and prayed to renew the license and withdraw the decision of cancellation of license which was not fair and correct. The learned Counsel highlighted the factual events starting from the passing of the impugned order dated 04-4-2004 to 8-4-2005 and also when the respondents in reply to the letter of the petitioner on 8-3-2005 requested the petitioner not to make any further application to the bank. Therefore, the learned Counsel submits that there is no violation of Natural Justice as the petitioner was given sufficient time to hear him, in a sense which is a post decision hearing. Even the representations on different dates continuing for a period of one year speak volume of the same. He cited the decisions of *Maneka Gandhi vs Union of India* 2 SCR (1978) 621, *Canara Bank vs V. Asasthy*, 6 Supreme Court Cases 2005 321, *Chiman Lal Shahu vs Union of India* AIR 1990 (SC) 1192 and *Bangladesh vs Professor Golam Azam* 46 DLR (AD)192 in support of his contentions.

Heard the learned Counsel for both sides at length and considered their submissions. We have gone through the petition, impugned order and the different Annexures to the petition carefully. At the very outset let us glean the relevant law on the issue. Section 3(2)(iii) of the Foreign Exchange Regulation Act, 1947 runs thus;

> "3. Authorised dealers in foreign exchange—(1) The Bangladesh Bank may, on application made to it in this behalf authorize any person to deal in foreign exchange.
>
> (2) An authorization under this section—
>
> (i) .....
>
> (ii) .....
>
> (iii) may be granted to be effective for a specified period, or within specified amount, and may in all cases be revoked for reasons appearing to it sufficient by the Bangladesh Bank."

12. On a plain reading of the section we have found that the law is clear that in a fit case Bangladesh Bank can take any decision for revoking the license of any person which has been granted for a specified period by fixing a target to be achieved. From annexure B, i e FE Circular No. 3/2002 it appears that certain conditions were accepted by the petitioner of which achievement of target of US$ 2.50 lakhs could not be achieved by him. But he made representation asserting that he has fulfilled the target by producing supporting documents in several aspects. These are the things which cannot be decided in writ certiorari since its scope is very limited. This Division cannot sit as a Court of appeal while exercising jurisdiction under certiorari. This is a settled proposition of law. The petitioner if so advised can well bring a civil suit to establish his case.

13. Next comes the most vital aspect of the case whether the principle of Natural Justice has been violated in the facts and circumstances of the present case. Here we want to clarify some dates which are very much relevant on

the issue. The impugned order was issued on 4-4-2004 and right after that on 13-4-2004 the petitioner made application for renewal of his license to the respondent and thereafter over a period of one year the petitioner and the respondents effectively took up the matter for coming to a decision and finally the respondents informed the petitioner that they cannot withdraw the decision taken by them.

14. Now, comes the question whether under the facts and circumstances of the present case the principle of Natural Justice has been violafed as stated above. Our first query in this regard is what would have happened if the petitioner would have been served with the notice for showing cause why under section 3(2)(iii) of the Act his license should not be cancelled. It would have been the same thing as we have found that has happened in the instant case right from passing of the impugned order on 4-4-2004 which ended up by the letter dated 4-4-2005 (Annexure-G). Considering this aspect, we can very well say that the petitioner was given post decision hearing and, as such, no violation of principle of Natural Justice was committed on that score.

15. In the decision of *Maneka Gandhi* vs *Union of India* it has been observed by Indian Supreme Court:—

> "The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, merely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, IJ emphasized in Russel vs Duke of Norfolk that "whatever standard of Natural Justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case" What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of situation. It may be a sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal. It may be a hearing prior to the decision or it may be a post decisional remedial hearing prior to the decision or it may even be a post decisional remedial hearing. The audi alteram partem rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise. This circumstantial flexibility of the audi alteram partem rule was emphasized by Lord Reid in Wiseman vs Somerville (supra) when he said that he would be "sorry to see this fundamental general principle degenerate in to a series of hard and fast rules" and Lord Hallison LC also observed in Pear-berg vs Party that the Court "have taken in increasingly sophisticated view of what is required in individual cases." If would not, therefore be right to conclude that the audi alteram parem rule is excluded merely because the power to impound a passport might be frustrated, if prior notice and hearing were to be given to the person concerned before impounding this passport. The passport authority may proceed to impound the passport without giving any prior opportunity to the person concerned to be heard, but as soon as the order impounding the passport is made, and opportunity of hearing remedial in aim, should be given to him so that he may present his case and controvert that of the Passport Authority and point out why his passport should not be impounded and the order impounding is recalled." *(underlined by us)*

16. In the decision of *Kanara Bank* vs *Awasthy* it has further held by the Supreme Court of India:

"In view of the fact that no prejudice has been shown. As is rightly pointed out by learned Counsel for the appellant, unless failure of justice is occasioned or that it would not be in public interest to do so in a particular case, this Court may refuse to grant relief to the employee concerned. It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing.

17. Same principle echoed in the decision of *Charan Lal Shahus in AIR 1990 (SC)* as referred to above.

18. In the case of *Charan Lal Sahu vs Union of India AIR 1990 (SC) 1480* it was observed :

"This Court reiterated that *audi alteram partem* is a highly effective rule devised by the Courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. The rules of Natural Justice can operate only in areas not covered by any law validly made. 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 or 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 partam rule at the pre-decisional stage. If the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected the administrative decision after post-decisional hearing was good."

19. In *Abdul A'la Moudoodi vs West Pakistan, 17 DLR (SC) 209, Farid sons Ltd vs Pakistan 13 DLR (SC) 233* and *Swadeshi Cotton Mills vs India AIR 1981 SC 818* the Court of this sub-continent held that the principles of natural Justice should be deemed incorporated in every statute unless it is excluded expressly or by necessary implication by any statute.

(emphasis supplied).

20. Further in the case of *Fazal Bhai vs Custodian General, AIR 1961 SC 1397* it was held that where the statute does not require service of notice and the person sought to be affected has already field a representation, the question would arise whether that person has really been prejudiced by the non-service of notice as the essence of the principle of fairness.

(emphasis supplied)

21. In our Jurisdiction we have found in the decision of *Professor Golam Azam vs Bangladesh* that our Appellate Division also endorsed the view that the violation of principle of Natural Justice in a fit case may be construed by taking into consideration post decisional hearing. Justice MH Rahman (as his Lordship then was) observed:

"In case where no prior notice could be served, if, subsequent to the order, an opportunity of being heard is given to the person aggrieved, then that may be considered in certain circumstances to be a sufficient compliance of principle of Natural Justice. Had the respondent been given a post-decisional hearing after his arrival in this country or after the show cause notice dated 23 March 1992 served on him then perhaps the appellant's case could not have been assailed on the ground of violation of the principle of hear the other side or fair hearing. After hearing the respondent the Government could have omitted his name from the notification as it was done in a number of cases. The

respondent's case is that his case is not at all different from those persons whose names were omitted from the notification and that this case is totally dissimilar from those persons who did not come to challenge the notification.

22. The decision cited by the petitioner as referred to above in *Bangladesh vs Tajul Islam* 49 *DLR* is absolutely different and distinguishable from the case in hand. In that decision the license was cancelled under section 14(1) of the Immigration Ordinance 1982. In that section it was specifically mentioned that after giving an opportunity of being heard a decision can be taken. That being not done and the license was cancelled and the High Court Division declared the same to be illegal since there was a violation of Natural Justice and the Appellate Division upheld the decision. But section 3(2)(iii) Foreign Exchange Regulatory Act does not contemplate such requirement of holding any inquiry on giving any prior notice for taking any decision.

23. In the case in hand we have found that the petitioner brought this Writ Petition after one year of the passing of the impugned order and all these days he made representations with the respondents to resolve the matter. The petitioner has annexed all those papers before us in the Writ Petition and by Supplementary Affidavit respondents in their reply also submitted several factual aspects denying the claim of the petitioner. We have already observed that these are the question of fact which cannot be decided in writ certiorari. The petitioner right after the cancellation of his license could have moved before this Division on the ground of violation of Natural Justice but he waited for one year and tried to overcome his problem by taking up the matter with the respondents on 13-4-2005 right after 9 days of the passing of the impugned order on 4-4-2004. So it cannot be said that for not giving prior notice by the respondents [illegible] cancelling the License of the petitioner [illegible] been prejudiced for violation of the principle of Natural Justice.

24. But in fact as we have observed [illegible] petitioner in no way has been prejudiced [illegible] ground of violation of Natural Justice [illegible] present case as there is no violation of Natural Justice in the case for the reasons as discussed above. He took up the matter with the respondents right after their decision [illegible] cancelling the license and admittedly he got ample post decision hearing.

25. Failure to issue notice may not be [illegible] where the person complaining was aware [illegible] the proceeding and took steps to file [illegible] objection as it has happened in the present case.

26. Fortified with all these decisions, [illegible] findings and in consideration of the scope [illegible] certiorari in particular we are of the view, that in this case there has been no violation [illegible] principle of Natural justice as it appears [illegible] since there had been a sequential of post decisional hearing availed of by the petitioner with the respondents which started right after the passing of the impugned order on 4-4-2004 and ended on 4-4-2005 with the issuing of the letter by the respondent Bangladesh Bank (Annexure-G to the Writ Petition).

27. On the plea of violation of principle of Natural Justice, so many case are cited highlighting the aforesaid violation before this Division. Often we find that even on a frivolous ground, contending violation of principle of Natural Justice, a litigant tries to establish a right before a Court of Law. Certainly in a fit case the principle of Natural Justice should not be violated at all but not in all cases. There must be exception as it could be found in the instant case. *(underlined and emphasis supplied)*

28. The present case is indeed a case

which is an exception to the general Rule of principle of 'Natural Justice'. This is a case where we hold that the principle of Natural Justice has not been violated at all owing to post decisional hearing.

29. That being the position we are of the view that in all fairness this Rule should be discharged.

30. In the result, the Rule is discharged, however, without any order as to cost.

The order of stay granted earlier by this Court is hereby recalled and vacated.

Communicate at once.

Ed.

substitution, which Mr Hoque contends to be a nullity and not sustainable under law.

.....(12)

45 DLR 419, AIR 1933 (Mad) 454, AIR 1932 (Lahore) 592, 50 CWN 801, ILR 33 (Mad) 109, AIR 1919 (Cal) 257, AIR 1963 (Bom) 356 and ILR (II) Cal 611 ref.

Aminul Hoque with Md Nazmul Alam, Advocates - For the petitioner.

Habibul Islam Bhuiyan with Mohaddesul Islam, Advocates- For the respondent No. 2.

Judgment

Md Ashfaqul Islam J: Let the supplemen-