MERIL

v.

DAYANANDA DE SILVA & OTHERS

COURT OF APPEAL.
GUNAWARDANA J.
CA 789/97
1ST,7TH,17TH FEBRUARY, 2000
13TH, 27TH MARCH, 2000
5TH, 31ST MAY, 2000

Writ of Certiorari/Mandamus - Compensation package adopted by Cabinet of Ministers - Payment of lesser sum - Commissioner of Labour refuses to act - Public Law remedies - Liquidator of a public company - Character of public duties - Locus standi - Rational grounds - Legitimate expectation.

The Petitioner was an employee of C.C.C (Teas) Ltd. and his services were terminated with effect from 31.10.96. The Cabinet of Ministers however had on 9.8.1995 decided to liquidate the aforesaid Company, and formulated a scheme of compensation, to the employees on 25.9.1996.

The Petitioner was entitled to Rs. 355,000/- but was paid only Rs. 246,120/-. The Commissioner of Labour refused to intervene. The position of the Respondent was that a notice dated 30.4.97 was submitted to the Cabinet on 11.6.97, where the Minister of Public Administration had apprised the Cabinet that the employees nearing the age of retirement will be compensated according to the package or on the basis of a salary lost to the employee in consequence of the liquidation of the Company, whichever is less.

Held :

(1) Payment of Compensation on the basis of nearness to the usual age of retirement (60 years) is the very antithesis or converse of the

basis of payment of compensation on the length of service which was the governing criterion on which the earlier scheme had been formulated.

(2) It is irrational to seek to award compensation on the basis of two conflicting schemes, that is on the basis of the length of the service and also on the basis of the nearness to the age of retirement.

Per *Gunawardana J.*,

It is well known that if a decision is not based on rational grounds then review by the Court is sustainable. The decision of the Deputy Commissioner of Labour is liable to be quashed as it falls far below the standard that administrative or public officers are expected to display."

(3) Petitioner may have had a legitimate expectation that he would be awarded compensation in pursuance of that special scheme as this very legitimate expectation had not been realised, it had to be protected by judicial review.

Legitimate expectations are capable of including expectation which go beyond enforceable legal rights provided they have some reasonable basis..... The expectation may be based upon some statement or undertaking by or on behalf of the Public Authority which has the duty of making the decision, if the authority through its officers, acted in a way that would make it unfair or inconsistent with good administration for the applicant to be denied such an inquiry.

(4) A public law issue might be defined by reference to the authority making the decision. If the authority making the decision is a public authority or body as C.C.C (Teas) Ltd., for it has been converted into a public company then it should be subject to law regardless of the actual power being exercised.

(5) As C.C.C (Teas) Ltd., is under liquidation, the liquidator who had been appointed to liquidate the assets of the company, steps into the shoes or the position of the Company. As such the liquidator will be impressed with the public character of C.C.C (Teas) Ltd., for the purpose for which the liquidator had been appointed, that is to liquidate the assets.

Aplication for writs of Certiorari/Mandamus.

Cases referred to :

1. In Re Wednesbury Corporation - (1947) 2 A11 E.R. 680
2. Schmidt vs Secretary of State for Home Affairs - (1969) 2 Ch. 149
3. Oloniluyi vs Home Secretary - (1989) - Imm AR 135
4. Attorney General for Hongkong vs Ng Yuen Shiu - (1983) 2 AC 629
5. H. Lavender and Son Ltd., vs Minister of Housing & Local Government - 1970 1 WLR 1231
6. R v East Berkshire Health Authority, exparte Walsh - (1985) QB 152
7. R v Insurance Ombudsman Bureau 1994 - The Times, 7th January
8. Mc Claren vs Home Office (1990) - 1C.R. 824
9. R vs Civil Service Appeal Board exparte Bruce (1988) - 3 All ER 686
10. R v Panel on Take - Overs and Mergers, Exparte Datafin - (1987) 1 All ER 770
11. Council of Civil Service Union vs Minister for the Civil Service (1985) - AC 374
12. Stead, Hazel Co., vs Cooper - (1933) AER, 770
13. Fleet Street Casuals case - (1982) AC 617
14. R vs Richmond Confirming Authority - (1921) KB 248
15. Forbes & Walker Case - (1998) - 2 SLR 378

N.R.M. Daluwatte P.C., with P.B.Herath for Petitioner.
Adrian Pereria SSC for 1-7th Respondents

Cur. adv. vult.

December 14, 2000.

U. DE Z. GUNAWARDANA, J.

This is an application by the petitioner for a writ of certiorari and mandamus. Against whom such relief is sought under the judicial review procedure and as to why such remedies are sought would be clear from the sequel. The petitioner had been an employee of the Colombo Commercial Company (Teas) Limited and his service was terminated with effect from 31.10.1996. The Cabinet of Ministers had on 09.08.1995 decided to liquidate the aforesaid Company and a Committee, that had been appointed to devise a suitable scheme of compensation to the erstwhile employees who

numbered 59, had suggested a formula which had been adopted by the Cabinet on 25.09.1996 and was reflected in the Cabinet memorandum dated 05.09.1996 (P3(a)). And the recommendation relevant to the petitioner would be that which contemplates or directs the payment of 53 months' salary for those employees who had served for more than 16 years - the fact that the petitioner had been in the employment of the Colombo Commercial Company Limited being an undisputed fact. In terms of this compensation package (P3A) the petitioner was entitled to be paid Rs. 355,000/=, that being the upper limit to which payment of compensation was subject. The Secretary to the Cabinet, as evidenced by letter 3(b) dated 02.10.1996, had, in fact, issued instructions to the Secretary Ministry of Public Administration, Home Affairs and Plantation Industries to direct the relevant officers to implement the recommended compensation package which had been, as stated earlier, adopted by the Cabinet of Ministers.

But, by letter dated 30.09.1996 (P1) whereby the petitioner was informed that his service was terminated, he was also told that compensation that he would be entitled to would be Rs. 246,120/= whereas, in terms of the compensation package explicitly spelt out in P3a and approved by the cabinet on 25.9.1996, that is, five days before the date of the letter of termination of service (P1), the petitioner should get Rs. 355,000/=. It is significant to note there was no other scheme for the payment of compensation to the employees of the Company in question, as at the date i.e. 30.09.1996 on which date the petitioner was informed by the said P1 that he would be awarded compensation in a sum of Rs. 246,120/=. It is worth noting that it is stated in P1 that the said sum of Rs. 246,120/= is offered as compensation, to use the very words in the letter P1, "in terms of the approved compensation package". But that statement in letter P1 that Rs. 246,120/= is awarded as compensation "in terms of the approved compensation package" is not free from deceit because it is lacking in candour although in the letter P1 any specific reference to the scheme in P3a approved by Cabinet is artfully

avoided. The petitioner had complained to the Commissioner of Labour (7th Respondent) against the decision to pay him the lesser amount i.e. Rs. 246,120/=. But the Deputy Commissioner of Labour (6th respondent) deputising for the Commissioner, after an inquiry of sorts, had by letter dated 26.8.1997 (P6) informed the petitioner that no relief could be granted as the petitioner was not shown to have suffered any detriment.

The petitioner through this application to this Court, under the judicial review procedure, had sought:

(a) a writ of certiorari to quash the aforesaid decision made by the 6th respondent refusing to grant the relief that he sought from the Commissioner of Labour;

(b) an order of mandamus directing the 1st respondent, who had been appointed liquidator of the Colombo Commercial Company (Teas) Limited which is now in liquidation, to pay the petitioner the balance amount of the compensation; or in the alternative for an identical order directing the Commissioner of Labour to recover from the 4th respondent i.e. the Colombo Commercial Company (Teas) Limited for the benefit of the petitioner, the balance of the compensation due to the petitioner.

Subsequently, a note or memorandum dated 30.04.1997 (P12) had been submitted to the Cabinet on 11.06.1997 by the Minister of Public Administration etc. whereby he apprised the Cabinet of Ministers that the employees nearing the age of retirement will be compensated according to the compensation package or on the basis of salary lost to the employee, in consequence of the liquidation of the Company, in respect of the period from the date of retirement, to the (date of) 60th birthday, whichever is less as, that mode of payment - according to what is stated in P12-had been the accepted or inveterate policy that had been followed in the

matter of the payment of compensation to employees nearing or close to the age of retirement. The document P13 dated 18.6.1997 which is a communication under the hand of the Cabinet Secretary addressed to the Secretary of the Ministry of Public Administration etc. shows that the aforesaid memorandum (P12) was considered by the Cabinet on 11.06.1997, although it is obvious that consideration had been as cursory as cursory could be, and even adopted - although it is not said so, in so many words. In fact P13, which is as cryptic as it is vague, conveys a Cabinet decision to the Secretary of the Public Administration to be implemented by the latter. P13 also states that minister's intimation by Cabinet memorandum (P12), if it can be called so, had been noted by the Cabinet. From the tenor and purport of the said communication (P13) it is reasonably clear that the Minister's memorandum (P12) submitted to the Cabinet to the effect that compensation would be paid to the employees nearing retirement as stated there in i.e. in that memorandum (P12) had been accepted by the Cabinet to be acted upon. And that explains the necessity for the Secretary to the Cabinet to inform the Secretary of the relevant Ministry (i.e. Public Administration and Plantation Industries) by letter P13 dated 18.06.1997 that the (although it looks as if the Secretary had tried excessively in P13 not to express himself clearly) memorandum (P12) dated 30.04.1997 was taken into consideration or was considered by the Cabinet at the Cabinet meeting held on 11.06.1997. In any event, there is nothing to even remotely suggest that the intimation embodied in the Cabinet memorandum (P12) - pith and substance of the intimation being that employees on the verge of retirement would be paid as compensation the aggregate of the monthly salary from the date of retirement (in consequence of the liquidation of the Company) to the 60th birthday- was not accepted by the Cabinet or was even received or regarded with disfavour or that the Cabinet had dissented. Although the learned President's Counsel for the Petitioner had sought to impress upon the Court that there was no acceptance by the Cabinet of Ministers of the intimation to the Cabinet which

intimation or suggestion had been embodied in the memorandum (P12) - yet it is sensible to conclude that the acceptance by the Cabinet of Ministers of the intimation or suggestion is, to say the least, implies or understood or tacit without being put into express words - if I may say so.

But, I am inclined to think that the statement in the Minister's subsequent memorandum dated 30.04.1997 (P12), to the effect that the Minister's earlier memorandum P3(a) dated 05.09.1996 (which was approved by the Cabinet on 25.09.1996) did not explain or mention how compensation was to be awarded to those employees who were "very close" to the age of retirement, stems from a misconception (most probably, induced by the Minister's own advisers or the relevant officials) on the part of the Minister of his own previous memorandum or rather the compensation formula spelt out therein i.e. in P3a in which the basis of awarding compensation was the length of service of the employee. It cannot logically be said as, in fact, it had been said in the subsequent memorandum (P12), that the formula for compensation enunciated in the earlier memorandum P3(a) dated 05.09.1996 makes no provision for payment of compensation to those employees on the "verge of retirement", because the yardstick or standard or the criterion adopted in P3a for the payment of compensation was an altogether different test, i.e. the length of service and not the fact of nearness to retirement. In terms of the scheme outlined or foreshadowed in the first Cabinet memorandum (P3a) with regard the matter of payment of compensation, what mattered was the length of service, and nothing else and the amount of compensation was made proportionate to the number of years of service. If an employee had served for more than 16 years - such an employee was recommended to be paid 53 months' salary which recommendation or scheme of compensation, be it noted, as stated above, had been accepted by the Cabinet on 25.09.1996 without any qualification. If it is possible or there is scope for saying, as, in fact, it had been stated in the subsequent Cabinet Memorandum (P12), that the scheme of compensation

embodied in Cabinet memorandum P3 (a) does not make provision for payment of compensation to the employees who are "close to the age of retirement" - then, one might as well say that the said compensation package (P3a) makes no provision for payment of compensation to employees who are un-married or for the payment of compensation to employees on the basis of either of the two main groups i.e. male and female into which living beings are placed according to their reproductive functions. Even according to the compensation package in P3(a), which was based solely on the criterion of length of service, an employee nearing the age retirement can, in fact, be paid and there was no prospect of such an employee going un-paid or not receiving any compensation. For, there is no difficulty at all in paying an employee nearing the age of retirement or on the "verge" thereof according to the length of his service which is the rationale on which the scheme of compensation set out in P3a had been shaped. This illustrates that the statement in the later Cabinet Memorandum (P12), viz: that the scheme of compensation in P3a had no provision for the payment of compensation to employees who were on the verge of retirement, was illusory and unreal. Whether or not a person is "on the verge of" or "very close" to retirement is a subjective question, and the answer to such a question would necessarily be coloured by one's personal opinions and idiosyncrasies or the views peculiar to a person which might vary from individual to individual. The awarding of compensation with reference to the question as to whether or not a person is "very close" to the age of retirement cannot be reconciled or integrated with awarding compensation on the basis of the length of service unless it is indicated, with clarity and precision, the age group that falls into the category of employees falling into that group i.e. the age group on the "verge of retirement". One has to adopt one or the other of the two schemes. The action, rather the statement of the minister in P12 is prompted by the false or mistaken assumption that the former scheme in P3a had made no provision for the payment of compensation to the employees on the "verge of retirement" - since there is no difficulty in paying employees

on the "verge of retirement" on the basis of the length of service. It is irrational to have specially devised a scheme of compensation on the basis of the length of service as the sole criterion, as the scheme embodied in P3a was, and then complain of the lack of, or seek to find therein, a provision for the payment of compensation on the basis of nearness to retirement. Payment of compensation on the basis of nearness to the usual age of retirement i.e. 60 years is the very antithesis or converse of the basis of payment of compensation on the length of service which was the governing criterion on which the scheme in P3a had been formulated. The relevant minister had acted on a false impression or belief, in apprising or bringing it to the notice of the Cabinet by means of the memorandum dated 30.04.1997 (P12) that - in as much as the scheme in P3a makes no provision for the payment of compensation to employees on the "verge of retirement" - compensation would be paid to such employees on the basis of the amount of the aggregate of the monthly salary that such employees would have lost (which aggregate was to be calculated from the date on which the services were discontinued to the date on which they would have retired upon reaching the age of 60 had their services not been discontinued or had the employees not been compulsorily retired). As the recommendation or intimation in the Cabinet Memorandum (P12) was not based on rational grounds, then, review by the courts of any decision by whom so ever made, to pay on the basis or on the same basis as that on which the Cabinet decision was made on 11.06.1997 (on the basis of P12) - as is the decision of the Deputy Commissioner of labour, becomes a possibility. Firstly, the decision to pay as suggested in P12 is based, as stated above, on a wrong assumption by the Minister that no provision has been made in P3(a) for the payment of compensation to employees on the verge of retirement. It has been pointed out that those nearing retirement too, could be paid in terms of the scheme adumbrated in P3a.

Secondly, it is irrational to seek to award compensation on the basis of two conflicting schemes, that is on the basis of

the length of the service and also on the basis of the nearness to the age of retirement, more so, when the decision to pay those on the "verge of retirement" is made on a palpably wrong or false assumption that they cannot be paid or that there is no provision for the payment of compensation to that group i.e. employees on the "verge of retirement" in the scheme set out in P3a which was a scheme specially devised after study for compensating the employees of this particular Company in question. In a way, it is so unreasonable as to verge on the irrational or absurd. It is important to appreciate that the object of the scheme of compensation (P3a) was clearly to reward the length of the service. When one examines (P3a) it would be clear that scheme envisages the payment of higher compensation to those employees with a longer period of service. And the Chairman/Managing Director of the Colombo Commercial Company (Teas) Limited, who chose to offer by P1 only Rs. 246,120/= which represented the aggregate of the salary in respect of the period from the date of discontinuance of service or retirement, to the 60th birthday, as compensation to the petitioner had flouted or acted in defiance of the very rationale or the logical basis of P3a which was to make the compensation proportional to the length of the service of the employees. What was sought to be achieved by the scheme in (P3a) was to make the compensation proportional to the length of the service. That object is frustrated, at least, in relation to some employees, when compensation is made to depend on the length of service left over or outstanding as would be the case if the employees nearing or on the verge of retirement are paid, taking into consideration only the period of service that remains outstanding. The latter mode of payment wouldn't achieve the predominant, if not, the sole object desired to be attained by the earlier scheme in P3a which was to award-in recognition of their service deserving commendation upon termination of service, higher compensation to those employees with a longer period of service. For instance, an employee may have served 35 years and have only one more month before reaching the age of 60, at which he retires, in which case, he will get one

month's salary as compensation, although the scheme indicated in Cabinet Memorandum (P3a) and approved by the Cabinet contemplates the payment of 53 months' salary to employees who had served more that 16 years - into which latter category the petitioner falls - he having served for 36 years. In any event the decision reflected in the letter dated 30.09.1996 (P1) to pay the petitioner. Rs. 246,120/= is not lawful because that decision had been materially affected and in fact had been brought about as a result of the compensation package (P3a), be it noted, approved by the Cabinet, being wholly disregarded. In fact, as on that date i.e. 30.09.1996, that being the date of the letter (P1) informing the petitioner that his service will be discontinued as from 31.10.1996, there was no other scheme, in any event, no other scheme approved by the Cabinet, than the one embodied in P3(a), for the payment of compensation to the employees of the Colombo Commercial Company (Teas) Limited that was being liquidated. And if compensation had been paid in pursuance of that scheme (P3a), as the petitioner should have been that being the one and only germane scheme, as at the date of the letter (P1) whereby the service of the petitioner was terminated, the petitioner would have been entitled to Rs. 355,000/= being the 53 months' salary subject to the upper limit of Rs. 355,000/= that the petitioner was entitled to, in accordance with P3a, which represents the earlier scheme approved by the Cabinet on 25.09.1996. The decision conveyed to the petitioner by P1, to pay the petitioner Rs. 246,120/= had been reached flagrantly overlooking the one overriding factor which was also the sole relevant circumstance, that should have been taken into reckoning viz: the compensation package set out in P3a. And as such, the conduct of the person or authority who took the decision to pay the petitioner a lesser amount of Rs. 246,120/= as is evident from P1 is a good example of a case illustrating behaviour that must be deemed to warrant the designation of irrationality. (Some of the documents produced by the petitioner, such as P7, are illegible and cannot be read at all and the submissions, on the whole are un-profitable) The rules of natural justice are a

set of uncodified common law rules offering procedural safeguards that have been developed over time by the judiciary to ensure that decision makers act according to basic standards of fairness. The importance of the rules of natural justice can be observed when one considers the crucial role performed by procedural rules in helping to ensure that decisions are taken in any matter according to all relevant facts and not in defiance of them. It is well known, (although no such argument had been put forward in this case) that if a decision is not based on rational grounds, then review by the Courts is sustainable. It is worth repeating for the sake of emphasis, that as at the date on which the petitioner was informed by P1 i.e. 30.09.1996, that his service would be terminated as from 31.10.1996, the only scheme of compensation in operation or in force was that embodied in P3(a) dated 05.09.1996 and approved by the Cabinet on 25.09.1996. And it is to be remembered that it was by the same letter (P1) that the petitioner was offered compensation in a sum of Rs. 246,120/= not in conformity, but in defiance of the only scheme of compensation (P3a) that had been approved by the Cabinet as at 30.09.1996. It is admitted that sum i.e. Rs. 246,120/= had been awarded on the basis of the aggregate of monthly salary in respect of the period from the date of retirement, that is, the date on which service was terminated by P1, to the date of reaching the age of 60. The petitioner had to retire 21 months before the age of 60 in consequence of the liquidation of the Company of which Company he had been an employee. It is irrational to award compensation by a rigid adherence to a supposed policy, as had been done by P1 dated 30.09.1996, on the basis of the period of service left over or outstanding before the petitioner reaching the age of 60. It is irrational because, whoever adopted that scheme of awarding compensation to the petitioner on the basis of the remaining period of service, calculated from the date of termination of service, to the date of the employee reaching 60 years of age, had wholly failed to apply his mind to the only criterion for payment of compensation spelt out in the relevant scheme of

compensation (P3a) which was, as repeatedly stated in this order, the one and only operative scheme of compensation relating to the matter in hand recognised by the Cabinet, as at the date that compensation was, in fact awarded by letter P1 dated 30.09.1996, (signed by the Chairman/Managing Director of the Colombo Commercial Company (Teas) Limited which is the 4th respondent). It is to be noted that the Minister sought the Cabinet approval by P12 (Cabinet Memo), on a very much later date, i.e. 30.4.1997, for the basis on which the petitioner had been awarded compensation by P1. And the Cabinet had made a note of it or had considered P12 on a still later date i.e. 11.06.1997. I have highlighted these facts in order to bring into prominence one salient fact, that is, that, as at the date of P1 which was 30.6.1996 - there was no scheme of payment authorized or contemplated by the Cabinet other than the one spelt out in P3a referred to above. It is worth reminding oneself at this juncture that according to Lord Green in *Wednesbury Corporation*[1] a situation that can lead to a decision being set aside concerns taking irrelevant considerations into account or failing to take relevant considerations into account. This, as I said before, is a recognised ground for review. In the common run of cases, in considering whether a decision maker has gone about exercising his discretion correctly there is, very often, a complex interplay of considerations that would operate on the mind of the decision maker. In such a case or situation a court exercising powers or functions of review under the judicial review procedure has to decide if proper emphasis has been given by the decision maker to the right aspect or considerations. But in this case in hand, no such exercise is called for since the mode of payment, if not the only scale of payment itself, was sternly prescribed by the Cabinet as was indicated in P3a and no one had any choice or option as at 30.09.1996, (that being the date of P1 whereby the lesser amount of Rs. 246,120/= was offered to the petitioner as compensation) except to pay in pursuance of the scheme laid down therein i.e. in P3a. And as such balancing of relevant and irrelevant considerations had been obviated. By deciding

to pay compensation on the basis of the length of the period between the date termination of service and the date of the petitioner reaching the age of 60, the authority concerned had taken into account as a relevant factor something which that authority should not properly take into account and had also excluded from taking into account the one and only relevant consideration viz: the scheme embodied in P3a which it was the bounden duty of the authority awarding compensation not merely to consider but also was its (authority's) bounden duty (dictated by the Cabinet decision made on the basis of the recommendation in P3a) to have adopted with punctilious attention. Taking into account an irrelevant consideration, that is a supposed policy referred to in the Cabinet Memorandum P12 dated 30.04.1997 of awarding compensation to those on the "verge of retirement" i.e. on the basis of the aggregate salary for the period from the date of discontinuance of service to the date of reaching the age of 60 - the purpose for which the scheme outlined in P3a was specially devised had been wholly disregarded - the purpose of the scheme in P3a being to make compensation proportional to the length of the service in appreciation of the longer period of service.

What the petitioner has sought is a review of the decision of the Deputy Commissioner of Labour whose decision dated 26.8.1997 (P6), in truth, and one may almost divine, so to speak, is rested on the Cabinet decision adopting the scheme of compensation setout in the memorandum P12 if, infact, the cabinet can be said to have adopted it. In any event both the scheme of compensation in P12 which was accepted or rather of which the Cabinet had made a note on 11.06.1997, and the order (P6) of the Deputy Commissioner whereby he upheld the decision to pay only Rs. 246,120/= have a common basis i.e. the policy, which is, (going by what is stated in P12) said to be a long - standing one: to pay employees, on the "verge" of retirement and whose services are terminated, on the basis of the aggregate salary in respect of the period from the date that the services are terminated to the date on which

the 60th birthday falls. As such, the irrationality of the scheme in P12 is infused into decision of the Deputy Commissioner or his decision is imbued with the irrationality of the scheme of compensation suggested in P12, which was, at best, noted by the Cabinet, and presumably if not, most probably approved. Even if the Deputy Commissioner's decision is not based on the Cabinet decision to adopt the intimation or recommendation in P12, yet both the Cabinet decision and the order of the Deputy Commissioner (P6) are obviously based, on a policy, said to be of old standing, described in P12 and which was said to be followed (according to what is stated in P12) in the matter of payment of compensation to those employees "on the verge" of retirement. The decision of the Deputy Commissioner of Labour (P6) is liable to be quashed as it falls far below the standard that administrative or public officers are expected to display. The decision of the Deputy Commissioner is not based on rational grounds because the one overriding factor viz: the Cabinet decision dated 25.09.1996 adopting the scheme of compensation recommended in P3a (in which scheme compensation was proportional to the length of service) was wholly left out of consideration. It is irrational to take into consideration only such a fusty policy said to be of general application as that described in P12 dated 11.06.1997, when the Cabinet had decided at an earlier date i.e. is 25.09.1996 to award compensation in pursuance of a special scheme reflected in P3a which had been formulated by a committee, after study, for the specific purpose of compensating the employees of the Colombo Commercial Co. (Teas) Limited. As a general rule, a decision can still be held to be unreasonable, notwithstanding the existence of certain relevant considerations in support of it.

In any event, the petitioner must be held to have had a legitimate expectation that he would be awarded compensation in accordance with the scheme in P3(a) which was distinctly formulated by the Cabinet, with particular reference to the circumstances of the employees of the Colombo Commercial Co. (Teas) Ltd., for the specific purpose of awarding compensation to the employees of the said Company which

was being liquidated. It is irrational also to award compensation in terms of a supposed general policy, such as that referred to in the later Cabinet memorandum P12, when, in fact, a special scheme, reflected in P3a had been devised to cater to the employees of the Company in question. The only scheme of compensation, as had been repeatedly emphasized in this order, that was in force, as at the date that the petitioner's service was terminated, i.e. 31.10.1996, devised for the purpose of awarding compensation to the employees, who were forced to relinquish their employment as a result of the winding up of the Company, was the scheme in P3(a) approved by the Cabinet on 25.09.1996, that is, about 5 or 6 days before the petitioner was informed by letter (P1) dated 30.09.1996 that his service would be terminated as from 31.10.1996. Essentially, the petitioner may have had a legitimate expectation that he would be awarded compensation in pursuance of that special scheme applicable to the employees of the Colombo Commercial Company (Teas) Limited. As this very legitimate expectation had not been realised, it had to be now protected by judicial review. Where there is such an undertaking or policy guideline as that spelt out in P3a which more than justifies or prompts the petitioner to expect that he will be awarded compensation in the manner indicated therein, the petitioner can truly be said to have a legitimate expectation. The term "legitimate expectation was probably first employed by Lord Denning in *Schmidt vs. Secretary of State for Home Affairs*"[2] and it has since been widely accepted in a number of different contexts. And I myself had to consider, albeit cursorily, the scope and applicability of this concept in case No: C.A. 213/2000.

I think, the first situation where a legitimate expectation might be recognised is where there has been an express undertaking or something equivalent to that. When the Cabinet approved the recommendation, made through the Cabinet memorandum (P3a) by the relevant Minister, that the employees of the Colombo Commercial Company (Teas) Limited be paid compensation in terms of a scheme suggested- be it noted by a committee that had been specially appointed to study and recommend a suitable compensation package -

the petitioner was justified in expecting that he will be awarded compensation as contemplated by that package deal spelt out in P3a. As the authority awarding compensation was, in the circumstances under a duty to pay compensation as recommended in the relevant package, more so as the package had been approved by the Cabinet, the petitioner, as well as the other employees whose services were discontinued, had a right to expect that the authority or body awarding compensation will act in accordance with that veritable undertaking. "Inconsistency of policy may also amount to an abuse of discretion particularly when undertakings or statements of intent are disregarded unfairly or contrary to citizen's legitimate expectation" - Wade and Forsyth.

There is no gainsaying that when the Cabinet of Ministers made a decision on 25.09.1996, to adopt the scheme of compensation embodied in the Cabinet memorandum (P3a) dated 5.9.1996 submitted by the Minister, that Cabinet decision based on the Minister's memorandum was tantamount to a statement or declaration of intent on the part of the Cabinet to pay compensation depending on or proportional to the length of service, subject to an upper limit of Rs. 355,000/=.

There are revealing decisions on this ground of judicial review - one such being *Oloniluyi vs. Home Secretary*[3] (which is referred to in my judgment in an earlier case referred to above) where a student from Nigeria was given oral assurances that she would have no difficulty in returning to the U.K. after going home for Christmas. The student was refused leave to enter on returning. The refusal was quashed by the Court of Appeal (England) on the ground of legitimate expectation and unfairness. As had been observed in Wade, such decisions show that Courts now expect the government departments to honour their statements of policy or intention.

It is to be observed that the conduct of the 4th respondent i.e. The Colombo Commercial Company (Teas) limited - as manifested through the action of its Chairman/Managing Director and the Finance Manager in setting out and exhibiting notices both in English (P. 4A dated 09.10.1996) and Sinhala

(undated) that the employees will be paid according to the scheme exhibited in those notices - also must be held to have given rise to a legitimate expectation in the employees that the Company (4th respondent) will act in accordance with the said compensation package. After such an express undertaking has been given by a public Company which undertaking was also published - the employees have certainly a right to expect that the 4th respondent Company will act in accordance with the undertaking. These notices had published and announced to the employees the very scheme of compensation adumbrated in P3a in which compensation was proportional to the length of service. As the Colombo Commercial Company (Teas) Limited (4th respondent) had now failed to do what it said, there are grounds for judicial review. It must not be permitted to shrink back from that commitment. In this context, it is worth pointing out that in this application, an order of mandamus is sought directing the liquidator (4th respondent) who, as explained in the sequel, is now the agent or representative of the company which is now in liquidation. *Attorney General for Hong kong vs. Ng Yuen Shiu*[4] is a good example of where the operation of the principle of legitimate expectation arising on an express undertaking was subjected to close analysis by Lord Fraser. He stated that: "legitimate expectations are capable of including expectations which go beyond enforceable legal rights provided they have some reasonable basis.... The expectation may be based upon some statement or undertaking by or on behalf of the public authority which has the duty of making the decision if the authority through its officers, acted in a way that would make it unfair or inconsistent with good administration for the applicant to be denied such an inquiry". The judgment from which I have quoted above concerned an illegal immigrant who had come to Hong kong from Macau and had established a business in Hong Kong. In order to clear up a problem that existed relating to illegal immigration, it was officially announced that any persons presenting themselves to the authorities would have their individual cases dealt with on their merits. However, when the applicant came forward he was detained while a deportation order was applied for. Following this his appeal.

against deportation was dismissed without a hearing. Certiorari was sought on the ground that the applicant had not been allowed to present his case against deportation to the authorities. It was held that the public undertaking had created a right that would otherwise not have existed. Although an alien as a rule does not have a right to a hearing in this situation after the announcement had been made. The Privy Council considered this to apply when there have been express assurances of this kind.

In the Colombo Commercial Company (Teas) Limited case too a right to a legitimate expectation that the employees will be paid compensation pursuant to the formula spelt out in P3a, (in which scheme, compensation was proportional to the length of service) must be held to have crystallized as the company through the Chairman/Managing Director and the Finance Manager had made a formal declaration or promise by publishing notices, as explained above, that the employees whose services were terminated would be paid compensation in accordance with the scheme in P3a.

In the case in hand, that is in the case with which I am dealing, the authority or the Officer who awarded, by the said P1 dated 30.09.1996, compensation in terms of a supposed policy to pay compensation to employees on the basis of the remaining length of service and not on the basis of length of service already accomplished or concluded, which latter basis, as explained above, was the main principle upon which P3a was based or formulated, had plainly acted contrary to legitimate expectation which had been created by the decision made by the Cabinet on 25.09.1996 to adopt the scheme recommended in P3a - that is, to award compensation on the length of service. It is interesting to notice that it is by the Cabinet memo dated 30.04.1997 (P12) (which memo was put up for consideration by the Cabinet, as stated above on 11.06.1997) that the relevant Minister, if I am so, sought to give some semblance of legitimacy, if that were possible, to the basis on which compensation had been offered, if

not awarded, to the petitioner by P1 dated 30.09.1996 - a date which was nearly nine months anterior to the date on which Cabinet Memo (P12) was considered by the Cabinet. It is to be recalled that it is by means of Memo (P12) that the relevant Minister apprised the Cabinet that there was no provision in P3a dated 5.9.1996 for payment of compensation to employees on the "verge of retirement" and as such employees would be paid as compensation, a sum equivalent to their aggregate monthly salary calculated from the date of discontinuance of service to the date of 60th birthday.

Of course, neither in his submissions nor in his petition had the petitioner sought relief on the grounds of irrationality or legitimate expectation. In fact, nowhere in the submissions (either written or oral) made on behalf of the petitioner had any known ground of judicial review been invoked or even mentioned, at least, for the sake of keeping up appearances. The submissions were at best, a mere recapitulation of facts.

As will now be apparent the decision to award the petitioner can be assailed or attacked, under the judicial review procedure, at least, on the two grounds enunciated above: (a) irrationality and (b) legitimate expectation provided the petitioner has the locus standi or sufficient interest to challenge the decision and the issue involved is a public law issue. To say the least, it is also of some passing interest to note that the subsequent decision to pay the petitioner, on the basis of the principle of nearness to retirement, if, in fact it can be called a decision by the Cabinet, is bad or unlawful in that the exercise of discretion or judgment on the part of the Cabinet is not genuine because rigid adherence to a policy, or a supposed policy, had acted as a fetter. It is to be recalled that the relevant Minister had by Cabinet Memorandum (P12) dated 30.04.1997 brought it to the notice of the Cabinet on 11.06.1997 - that it had been the "policy from a long time past" to pay compensation to employees on the "verge of retirement" on the basis of the compensation formula or aggregate of the salary for the period from the date of retirement to the date of the 60th birthday, whichever is less.

The Cabinet had merely made a note of it which is, in the circumstances, tantamount to an approval of the Minister's recommendation made in P12 whereby the Minister had sought Cabinet approval to pay the employees of the relevant Company also on the same basis inveterate and outlined in the Cabinet memorandum (P12). But, in the circumstances one experiences some kind of malaise or strong uneasy feeling, that in approving, if, in fact, the Cabinet can said to have approved it, i.e. the Minister's recommendation in P12, in relation to the employees of the Colombo Commercial Company (Teas) Limited, the Cabinet had allowed an official or someone else to have the dominant influence, so that the other person or official, in effect, had dictated the outcome. It would be apt to cite a case which, I think, would be somewhat germane or relevant to the context. In *H. Lavender and Son Ltd., vs. Minister of Housing and Local Government*[5] an application for planning permission was refused and the appeal was disallowed by the Minister. From the Minister's letter which conveyed the decision it was clear that the reason for the rejection was that the site in respect of which the application had been made was in an area of good quality agricultural land. In these circumstances the Ministry of Agriculture had been consulted by the Ministry of Housing and Local Government and because the Ministry of Agriculture objected to the grant of planning permission the appeal was disallowed. In other words, the Minister who was supposed to decide the appeal did not really make the decision but left it to the officials in another Ministry. Of course, it has to be remembered that the petitioner had not sought a review of any Cabinet decision. But it would be unrealistic to assume that the Cabinet "decision" dated 11.06.1997, which adopted the recommendation of the relevant Minister embodied in P12, i.e. to pay compensation on the basis of nearness to the age of 60, did not have an overwhelming influence on the Deputy Commissioner whose order (P6) is sought to be quashed by certiorari. Sometimes, in exceptional situations one has to

divine what, in fact, did happen or one has to trust one's instinct more than even the evidence.

Remedies viz: Certiorari and Mandamus sought by the petitioner in this application are public law remedies which are only available in respect of public law issues. (The injunction and the declaration are private law remedies in contradiction to the public law remedies). As the Certiorari and Mandamus (two of the remedies available under the judicial review procedure) are public law remedies, it is important to know whether the relevant issue or decision under consideration in this matter involves public law.

I feel this is a suitable context in which to consider whether the issue arising on this application concerns a public law issue. The answer to the question on the issue is a public law issue depends on either of the two matters or on both viz: (i) source of power of the authority making the decision; (ii) the nature of the function that the authority exercises, or, sometimes, on both the above considerations. For most administrative authorities the source of their power will be legislation. But legislation can confer even upon a private body a public law element in respect of which judicial review can be sought. On the other hand, the fact that the source of power is statutory does not automatically mean that judicial review is available.

It is clear that the Colombo Commercial Co. (Teas) Limited is a statutory creation. The Colombo Commercial Company (Teas) Limited was incorporated under the Companies Ordinance and had been vested in the state and converted into a public Company in terms of the Act No: 23 of 1987. The Colombo Commercial Company (Teas) Limited is a public body and had been given tasks to do by the statute. It has public responsibilities to perform.

The remedies sought by the petitioner under the judicial review procedure are in the main as follows:

(a) Writ of Certiorari quashing the decision (P6) dated 26.08.1997 made by the 6th respondent who is the Deputy Commissioner of Labour;

(b) Writ of Mandamus directing the 1st respondent, i.e. the liquidator, to pay the balance compensation; or in the alternative for a Writ of Mandamus compelling the 7th respondent (the Commissioner of Labour) to recover from the 4th respondent i.e. Colombo Commercial Company (Teas) Limited, the said balance to be paid to the petitioner.

I shall consider in order whether each of the remedies enunciated above can be granted (on the assumption that the petitioner has the locus standi - which latter aspect will be considered last in the scheme of this order).

In deciding whether a Writ of Certiorari can be issued quashing the decision made by the Deputy Commissioner of Labour (6th respondent) which decision, if it can be so called, was conveyed to the petitioner by letter P6 dated 26.8.1997, one has to consider the source of the power of the 6th respondent (Deputy Commissioner of Labour) and the nature of his function. It is by the said letter P6 that the Deputy commissioner had refused relief to the petitioner who the Petitioner complained to the Commissioner of Labour that the petitioner had been awarded relief in pursuance of or in accordance with the scheme spelt out in P3a, by means of which scheme the Cabinet sought to make the question of compensation proportional to the length of service of the employee. There cannot be any controversy as regards, the fact that the 6th respondent derived the power to make the impugned order, if it can be called so, for it is more akin to an apology for an order - from a statute viz: Termination of Employment of Workmen Act No: 45 of 1971, or supposedly thereunder. Faintest clue cannot be gleaned either from the submissions of the learned President's Counsel for the petitioner or from the petition or application made to this court

as to the statute or the law under which the Deputy Commissioner of Labour (6th respondent) had made the decision sought to be quashed. The decision of the 6th respondent (Deputy Commissioner of Labour) is equally enigmatic with regard to the law under which he had made the decision in question. But it is well known that the fact that the source of the power is statutory does not automatically mean that judicial review will be available as a public sector employment case cited below would serve to show: in *R. vs. East Berkshire Health Authority, exparte Walsh*[6] the court held that judicial review of the dismissal of a nurse was not a public law issue or matter as despite the statutory origin of the authority that dismissed the nurse, its relationship with its employees (nurse being one of the employees) was based on contract. Accordingly the matter or dispute was held to fall within the domain of private law in which public law remedies could not be invoked. Rose L. J. made two relevant points in the case of *R. vs. Insurance Ombudsman Bureau*[7]. Firstly that a body would not be exercising governmental functions if the source of its power was consensual; secondly, Rose L.J. made it clear that even if it could be shown that its powers had been woven into the governmental system, amenability to review would excluded if the source of power was contractual, as was in the case of Insurance Ombudsman Bureau. But there are exceptions to the non-availability of judicial review in public sector dismissal cases. And some general guidance about such exceptions has been provided by inter dicta of Woolf *L. J. in Mc Claren vs. Home Office*[8]. In the case of *R. vs. Civil Service Appeal Board, Ex parte Bruce*[9] it was held that if a disciplinary or other body has been created by statute or prerogative to which body the employer or employee is entitled or is required to refer employment disputes then, that creates a public law element. In such a case the order made by that authority is an order made in the sphere of public administration. The termination of Employment of Workmen Act No. 45 of 1971 is a statute which, inter alia, provides for the reference of disputes arising out of the termination of

employment to the Commissioner of Labour. The Commissioner of labour, being a statutory creation, who decides many disputes involving employers and employees, his errors are subject to judicial review. The Deputy Commissioner's order refusing relief, which is sought to be quashed, in these proceedings, is susceptible to judicial review, because the Deputy Commissioner of Labour (6th respondent) had presumably and most probably acted under the Termination of Employment of Workmen Act No: 45 of 1971 in making that order although the Deputy Commissioner had been careful to avoid any mention of a statute in his decision. The source of Deputy Commissioner's power is legislation i.e. The Termination of Employment of Workmen Act No: 45 of 1971 and Certiorari is mainly applied to quash invalid decisions of bodies and authorities acting under statutory authority except in situations where, as explained above, the authority's power is derived from contract.

Furthermore the question of payment of compensation or what was promised to be paid as compensation to the petitioner, which is the subject matter of the dispute between the petitioner and the Colombo Commercial Company (Teas) Limited (4th respondent), did not arise pursuant to any contract of service. The undertaking to pay compensation, as explained earlier, was a unilateral act on the part of the Colombo Commercial Company (Teas) Limited. There was nothing consensual or contractual about it. In the case of R. vs. Civil Service Board, referred to above, May L. J. observed thus: "In the instant case, however, in the absence of a contract of service between him and the crown, I think one is bound to hold that there was a sufficient public law element behind the applicant's dismissal."

The claim of the petitioner too, that he be paid compensation in terms of P3a, is not grounded in contract but, as explained above, is one arising out of an unilateral undertaking given by the Colombo Commercial Co. (Teas) Limited to its employees.

Next, to consider whether it is permissible in law to compel by mandamus, the liquidator (1st Respondent), who had been appointed to settle the accounts and liquidate the assets for the purpose of making distribution and dissolving the concern in question i.e. Colombo Commercial Company (Teas) Limited:- The Colombo Commercial Company (Teas) Limited which is a public company, is veritably a government authority. It was formed and owned by the State in public interest, supported in whole or part out of public funds, and governed by managers deriving their authority from the State. Public Law remedies are available only in respect of public law issues.

A public law issue might be defined by reference to the authority making the decision. If the authority making the decision is a public authority or body, as Colombo Commercial (Teas) Limited is, for it has been converted into a public company in terms of Act No. 23 of 1987, then it should be subject to public law regardless of the actual power being exercised. The Colombo Commercial Company (Teas) Limited being a Public Company, it certainly exercised powers which were akin to the essentially governmental nature of truly "Public" activity. Even a private organisation might well be considered to be exercising powers which affect the public and thus be subject to public law. Much of the discussion about these issues has resulted from the somewhat controversial decision in *R. vs. Panel on Take-overs and Mergers, Ex-parte Datafin*[10] . In that case the Court of Appeal (England) was faced with the dilemma of deciding whether it was the source of the powers of the organisation which was the crucial factor, or the nature of the body itself and the public consequences of its decisions. *The Panel on Take overs and Mergers* was, be it noted, an entirely non-statutory self-regulating association which had devised and operated code of conduct to be observed in take-overs and mergers of public companies. The Court of Appeal (England) felt that, bearing in mind that the panel did have government backing and was exercising its duties in the public interest, it should

be subject to the control of public law. In Sri Lanka too, the major reason behind bringing various Companies into public ownership, as had been done by Act No: 23 of the 1987 in the case of the Colombo Commercial Company (Teas) Limited, was to ensure that public interest was protected and promoted. In this context, it would be relevant to note that there is an ideological view held, rightly or wrongly, that the cause of workers would be furthered if industries were in public ownership. It is fairly obvious that it was to protect and promote the interest of employees that the compensation was made proportional to the length of service of the employee. It is to be recalled that the Cabinet Memo dated 5.9.1996 (P3a) which spelt out a compensation formula on the recommendation that compensation be made proportional to the length of service had been approved by the Cabinet on 25.09.1996. A private company must make profits or it will not survive. A private company might reduce the frequency of or stop operating uneconomic services, even though those services might be vital to the community. Some companies were placed into Public ownership, sometimes, in order to maintain jobs or promote a particular industry. The rescue of British Leyland in 1975 by the British Government was done both to save jobs and to sustain a British Volume car manufacturer. The 1st respondent had been appointed as the liquidator of the Colombo Commercial Company (Teas) Limited on 10.03.1997 at an extraordinary general meeting of the creditors meeting of the Colombo Commercial Company (Teas) Limited. It has been held in *Council of Civil Service Unions vs. Minister for the Civil Service*[11] that if an employee is affected by a decision of general application made by the employer, then judicial review may be available to challenge the flaws in that decision. The impugned decision to pay the employees of the Colombo Commercial Company (Teas) Limited is also of general application and will apply uniformly to all employees who will be categorised as being on the "verge of retirement".

The question, if not, the moot-point, that arises in this case is whether or not the liquidator of a public company,

such as the Colombo Commercial Company (Teas) Limited, which is under liquidation, could be compelled by mandamus to pay the balance of the compensation due to the petitioner. It is to be remembered that this balance of the compensation is due from the Colombo Commercial Company (Teas) Limited which, as explained above, is a public company or body. And mandamus is an order which commands a public body to perform a public duty. As I have stated above, if the authority making the decision is a public authority then it should be subject to public law regardless of the actual power being exercised. But as the Colombo Commercial Company (Teas) Limited is now under liquidation, the liquidator, who had been appointed to liquidate the assets of the Company, so to speak, steps into the shoes or the position of the Company. As such the liquidator will be impressed with the public character of the Colombo Commercial Co. (Teas) Limited for the purpose for which the liquidator had been appointed, that is, to liquidate the assets which means to pay and settle and discharge the indebtedness of the Public Company concerned. It is to be observed that this balance of the compensation is a debt owed by the Company (4th respondent) to the Petitioner. In, fact, it has been held in *Stead, Hazel Co. vs. Cooper*[12] that a liquidator is an agent of the company in liquidation and is not in the same position as a receiver. One knows that a receiver is a ministerial officer who represents the court appointing him and is caretaker of the property for the court pending litigation. In the District Court actions, the receiver is commonly and frequently appointed. Because the liquidator is the agent of the company - the (the liquidator) represents the Company which means that the liquidator stands in the place of the company. Being the agent, the liquidator partakes of the complexion or character of the public company which has been absorbed into public ownership in the public interest. So that duties of the liquidator of a public company assume the character of public duties - since the liquidator is its agent who is clothed with the authority to speak and act on behalf of the Colombo Commercial Company (Teas) Limited which is in liquidation. I have stated above, that if the authority making

the decision is a public authoriry then it should be subject to public law.

The petitioner has also prayed that in the alternative that the Commissioner of Labour (7th respondent) be directed by an order of mandamus to recover from the 4th respondent the balance of the compensation for the benefit of the petitioner. It used to be said: *alterntive petition non est audienda* (an alternative petition is not to be heard). But those archaic rules or dogmas, as a general rule, are not to be taken seriously in the present times and there is absolutely no impediment, according to ideas in current fashion, which inflict least possible hardship on parties, to a party seeking relief in the alternative giving the court the option or choice of doing one or the other of two things. Since disobeying an order of mandamus places the official or the body concerned in contempt of Court, the order of mandamus acquires a greater coercive force which diminishes, if not altogether eliminates, the prospect of the order of mandamus being not obeyed by the liquidator (1st respondent). If both the liquidator (1st respondent) and the Commissioner of Labour are directed, even if that were possible, at the same time, to ensure payment to the petitioner, that will lead to uncertainty as it would then be difficult to foist responsibility, for the implementation of the order of mandamus, squarely on either of them. In this state of things I decide to issue mandamus only against the liquidator (1st respondent) requiring him, i.e. the liquidator to pay the balance of the compensation due to the petitioner in terms of the compensation formula set out in P3a and approved by the Cabinet of Ministers on 25.09.1996.

Besides, the prayer in the petition that the Commissioner of Labour (7th respondent) be directed to recover the balance of the compensation from the 4th respondent, that is, the Colombo Commercial Company (Teas) Limited for the benefit of petitioner is one made without any sense of responsibility and was apt to have misled the Court. In law, I cannot direct the Commissioner of Labour (7th respondent) to do that for

which the petitioner has prayed, under the relevant Act, or statute viz: Termination of Employment of Workmen Act No: 45 of 1971 since under the said statute the workmen whose employment is wrongfully terminated can recover the sum awarded as compensation by the Commissioner of Labour upon application made to the Magistrate having jurisdiction in the area. But in this case there is no such determination or an award made by the Commissioner in favour of the petitioner. For the Magistrate to enforce an award, there must, in the first instance, be an award made, be it noted, by the Commissioner of Labour. It is not to be forgotten that the Deputy Commissioner of Labour by his order dated 26.08.1997 (P6) had turned down or refused the petitioner's claim for, payment in pursuance of the scheme in P3a and is to quash that order (P6) made by the Deputy Commissioner that a Writ of Certiorari has been sought by the petitioner in this application.

Lastly, the question of petitioner's locus standi that is, whether or not the petitioner has sufficient interest in the matter to entitle him to institute judicial review proceedings remains to be considered. The general belief, commonly held, is that question of the petitioner's sufficient interest or locus standi is a threshold question which is somewhat of a preliminary point, arising before and independent of the merits of the action, and as such the question of locus standi has to be considered in limine i.e. at the very beginning. This may, in fact, be true in straightforward cases, where the issue of the petitioner's standing or locus standi is clear cut. In this case, which is somewhat of an intricate one, I decided to consider the question of status of the petitioner, to institute proceedings under the judicial review procedure, after the merits of the case had been considered for the simple reason that more meritorious the claim of the petitioner is, the more deserving he would be to be granted locus standi. In the *Fleet Street Casuals case*[13] Lord Wilberborce said of the less straightforward cases that: "it will be necessary to consider the power or duties in law of those against whom the relief is

asked, the position of the applicant in relation to those powers and duties and to the breach of those said to have been committed. In other words, the question of sufficient interest cannot, in such cases, be considered in the abstract or as an isolated point: it must be taken together with the legal and factual context". Thus, it is clear that in that judgment Lord Wilberborce was suggesting that no applicant has standing unless he has a case good on its merits. In other words, determining locus standi necessarily involves having regard to the substance of the claim. However the courts now seem to operate a less restrictive standing test for the prerogative orders.

The earlier view seemed to be summed up or reflected in the cases of an old vintage, for instance, *R. vs. Richmond Confirming Authority*[14] According to that view the applicant would be ineligible to obtain relief under the judicial review procedure, if his grievance is one which is complained of "in common with the rest of the public". As I myself had occasion to remark in *Forbes & Walker Case*[15] such a restrictive approach is irrational for as Craig (Tutor - Worcester College - Oxford) had said: "To deny access in such a case is indefensible. If the subject mater is otherwise appropriate for judicial resolution..... to erect a barrier of no standing would be to render many important areas of government activity immune from censure for no better reason than that they do affect a large number of people. One might be forgiven for thinking that common sense of the reasonable man would indicate the opposite conclusion: that the wide range of people affected is positive reason for allowing a challenge by someone."

It would be worth reproducing in this context an excerpt of my own judgment in the *Forbes and Walker* case referred to above. "I strongly feel that the test or rather the concept of denying locus standi to an applicant for judicial review for no other or better reason than that his interest or grievance is shared by many others in common with the applicant is as illogical and irrational as refusing to treat anyone member of

the public for a disease which has assumed epidemic proportions and has afflicted virtually the entire community."

But, even if the rules relating locus standi are construed narrowly, the petitioner in this application must be held to have sufficient interest and more, for the petitioner is affected personally and is genuinely aggrieved. What is stated with regard to the decision (which is sought to be quashed) to pay the petitioner in defiance of and contrary to the scheme in P3a, would, I hope, serve to show that the petitioner is directly concerned if for no other reason than that his pecuniary interest is adversely affected. The petitioner has clearly established the infringement of his right to receive Rs. 355,000/- in terms of the compensation package P3a.

Although I have considered the question of the petitioner's standing to be entitled to relied under the judicial review procedure, in a way, it was wholly un-necessary for me to have done that because, at the hearing before me, the petitioner's standing was taken for granted provided the petitioner had satisfied the other requirements to be entitled to relief.

It is of interest to note that it had been pointed out in the written submissions filed on behalf of the petitioner that the 1st respondent (liquidator) had paid himself compensation in terms of the scheme in P3a in which scheme compensation was made proportional to the length of service. The 1st respondent had been the Finance Manager of the Company and it will be recalled that it was under his hand, and that of the Chairman/Managing Director that undertaking had been given, as explained above, through notices which were published that compensation would be paid in pursuance of the scheme in P3a. It is worth noting that the liquidator had paid himself Rs. 355,000/= which is the exact amount claimed by the petitioner. Perhaps, the 1st respondent (liquidator) felt that one must be free only in giving to oneself and that generosity is due first to oneself and to oneself only.

For the aforesaid reasons all the reliefs prayed for in the petition are hereby granted except the order of mandamus directing the Commissioner of Labour to recover the balance of the compensation from the Colombo Commercial Company (Teas) Limited (4th respondent) for the benefit of the petitioner.

Certiorari is hereby issued quashing the decision (P6) made by the Deputy Commissioner of Labour, as the said order, as explained above, is not only tainted with irrationality but is also contrary to legitimate expectation created by the acts and circulars or notices published by the relevant authorities. The order of the Deputy Commissioner of Labour (P6) does not satisfy the expectations that were legitimately held by the petitioner which expectations arose, as explained above, out of, or as a consequence of, the conduct of the authorities.

The 1st respondent (liquidator) is also hereby directed by an order of mandamus to pay the petitioner the balance of compensation due to the petitioner as prayed for by the petitioner in his application to this court.

In addition, I also direct the 1st respondent to pay the petitioner costs fixed at Rs. 10,500/=. I wish the officials in general had a more benevolent outlook in the discharge of their duties without making a fetish of excessive bureaucracy and officialism.

application allowed.