DE SILVA AND OTHERS
V.
JEYARAJ FERNANDOPULLE AND OTHERS.

SUPREME COURT.
FERNANDO, J.
PERERA, J. AND
WIJETUNGE, J.
S.C. APPLICATIONS
NOS. 66/95 & 67/95 (CONSOLIDATED)
SEPTEMBER 13 AND 27, 1995.

Fundamental Rights - Prevention of exercise of legitimate rights by the use of armed thuggery and intimidation and pressure on the Law Enforcement authorities - Constitution, Articles 12 (1), 12 (2), and 14 (1) (c) - Parliamentary (Powers and Privileges) Act, No. 21 of 1993 ss. 3.4,7,9- Parliamentary Privilege- Statements made in Parliament - Statements recorded in Hansard.

The 1st to 62nd petitioners in application No. 66/95 are members of United Airport Taxi Services Society Ltd., (UATSSL), the 63rd petitioner; while the 1st to 29th petitioners in application No. 67/95 are members of the Airport Taxi Services Co-operative Society Ltd., (ATSCSL) the 30th petitioner.

The two Societies had entered into agreements with the Airport and Aviation Services (Sri Lanka) Ltd., the 14th Respondent to enable their members to provide taxi services for passengers disembarking at the Colombo International Airport, Katunayake ("Airport) for a period of six years commencing from 31 January, 1991. The said agreements were valid till 31 December, 1996.

A third Society by the name of Airport Taxi Services Society Ltd., ("ATSSL) too had entered into a similar agreement with the 14th Respondent. These three societies had 200 taxis operating at the Airport and were the only taxis so permitted by the 14th Respondent at the time. A monthly fee of Rs. 1,000/- was payable in respect of each vehicle. The 14th Respondent also was at liberty itself to provide similar services or through other persons or bodies. The ATSCSL were allocated numbers from 1 to 63, the ATSSL from 64 to 115 and UATSSL from 116 to 200. Passengers seeking the services of a taxi were required to obtain such services from the counter of the 14th Respondent which allocates a taxi on a duty turn commencing from number 1 to number 200 so as to ensure that the services of all 200 taxis were fairly and equally distributed.

The 14th Respondent had made no complaint about the manner in which the petitioner societies and their members discharged their obligations under the agreements.

The members of UATSSL and ATSCSL were predominantly supporters of the United National Party (UNP) while the members of the ATSSL were predominantly supporters of the People's Alliance (PA) and actively campaigned for the parties which they supported at the General Elections and Presidential Election of 1994.

On 31 January, 1995 the 1st to 7th Respondents held a public meeting at the airport premises and with the aid of armed and marked thugs threatened and intimidated the petitioners and despite the presence of nearly 150 to 200 policemen who looked on passively, have from 31 January, 1995 prevented the petitioners from entering the airport and engaging in their occupation. Several complaints to the Police and other authorities have been of no avail and now the taxi services at the Airport are being exclusively performed by the 16th Respondent company with a membership of 400 members and having as Secretary of the Company Felician Fernandopulle the brother of the 1st Respondent. The petitioners claim that the 1st to 7th Respondents have brought pressure on 8th to 13th Respondents who are high ranking Police Officers and on the 14th and 15th Respondents who are the Airport and Aviation Services (Sri Lanka) Ltd., and its Chairman respectively to achieve their objective.

The petitioners complain of infringement of their fundamental rights under Articles 12(1), 12(2) and 14(1) (g) of the Constitution by the Respondents.

The 1st Respondent who is a Deputy Minister of the PA Government whilst denying the allegations against him, states he attended the inauguration of a new taxi service on 01February, 1995 on invitation as the Chief Guest. He went to Katunayake at 9.30 a.m. and was the first of the invitees to arrive there. Within minutes, the Transport Manager of the Airport came with the officials and the other invitees, the 2nd to 6th Respondents who are members of Parliament or Provincial Councillors from the District and the members of the new taxi service also arrived. The opening ceremony was peaceful and concluded at 11.00 a.m. There was no violence or threats, all 400 members of the 16th Respondent company are not members of the PA.

The 2nd to 6th Respondents also denied the allegations against them and at the hearing it was conceded that there was no evidence of their involvement.

The 7th Respondent who is the Co-ordinating Secretary to the Deputy Minister (1st Respondent) also denied the allegations against him and adopted the averments in the affidavit of the 1st Respondent. The Colombo International Airport Taxi Services (Pvt) Ltd., the 16th Respondent was incorporated on 03 January, 1995 and he (7th Respondent) was its Chairman. The Company applied to the 14th Respondent for permission to run a taxi service at the Airport and this had been approved and numbers 200 to 600 had been allocated to the

16th Respondent company. Permission was granted to operate the taxi service from 1.00 a.m. on 01 February, 1995. A simple ceremony was organised on 31 January, 1995 to inaugurate the new taxi service and he (7th Respondent) invited the 1st Respondent to attend as Chief Guest at the ceremony as well as the 1st to 6th Respondents. Officials of the Airport authorities and the Katunayake Police were also informed about the ceremony. The 7th Respondent says he left the venue at 11.15 a.m.

The 10th and 13th Respondents who were the Senior Superintendent of Police and Chief Inspector of Police, Katunayake Police Station stated that on instructions of the Deputy Inspector- General of Police Western Province- Northern Range they attended the Airport on 31.1.95 to provide security with about 80 Police Officers as 1st and 2nd Respondents and several other members of Parliament were due to attend. No information regarding anticipated violence was received. They saw 1st and 2nd Respondents speaking to the crowd but they did not hear any of the persons asking any taxi operator to leave the Airport premises or threats of smashing up of vehicles. They deny that marked or armed thugs were present or that any incidents leading to a breach of the peace took place and they saw no mass exodus of taxi operators. No complaints of any such incidents were made to any officer on that occasion. A complaint marked P4 (A) dated 1.2.95 and several complaints corresponding to P6(1) to P6(49) were made at the Katunayake Police between 1.2.95 and 10.2.95 but the allegation that no action was taken on them was denied. Steps were taken to patrol the Airport premises but no incidents as were alleged were detected.

The Manager of the 14th Respondent, Airport and Aviation Services (Sri Lanka Ltd.) also filed an affidavit denying that any public meeting was held at the Airport on 31.1.95 or that any of the incidents alleged by the petitioners took place. On 31.1.95 the members of the 16th Respondent produced 38 vehicles for inspection and Turn Numbers 201 to 238 were issued to these vehicles. He noticed that the 1st, 2nd, 4th and 7th Respondents were present on 31.1.95 and he noticed them talking to the persons there. He did not notice any mass exodus of taxis of the three companies which had subsisting agreements with the 14th Respondent company nor any commotion or any masked or armed persons.

In reply to the 1st Respondents affidavit denying the remarks attributed to him, the petitioners filed a counter-affidavit dated 31.5.93 annexing extracts from the Hansard of 7.2.95 where the 1st Respondent was involved in exchanges in Parliament over what took place on 31.01.95 at the airport.

The 1st Respondent's responses in Parliament reflect on the accuracy and credibility of statements in his affidavits filed in Court and he did not seek an

opportunity to file a counter affidavit in explanation.

Held (Perera, J. dissenting) :

1. In the absence of any counter-affidavit from the 1st Respondent, his remarks in Parliament cannot be interpreted, discounted or otherwise questioned as being general statements about thuggery, or general political views about political opponents or wrong doers or otherwise. The Court must take Hansard as it is, as setting out certain facts without attempting to draw inferences from those facts or to come to any conclusion as to the truth or otherwise of what the 1st Respondent said. The 1st Respondent's affidavit is thus contradicted by the fact that he made statements in Parliament which are quite inconsistent with his affidavits. Those inconsistences are so grave, that his affidavit cannot safely be acted upon. The consequence is that, as between the petitioner's and the 1st Respondent's versions it is more probable that, the 1st Respondent did (as alleged by the petitioners) instigate those present, by labelling the members of the petitioner-societies as UNP stooges and by uttering threats intended to drive them away from the Airport.

2. The 1st Respondent's statements in Parliament are not regarded as amounting to admissions or corroboration of the petitioners' version, or as substantive evidence, but only as facts (i.e. inconsistent statements) relevant to the credibility of his affidavit.

3. The petitioners' version is in no way internally inconsistent while the 1st Respondant's version is unreliable because it is seriously contradicted by his own previous statements.

4. The infirmities in the 1st Respondent's affidavit do not help the petitioners to tilt the balance in so far as the 7th Respondent is concerned; for his affidavit is not undermined by other inconsistent statements.

5. The petitioner's claim that their members have not been able to obtain even a single duty turn after 1.2.95 is given credence by the 14th Respondent's failure to furnish the relevant information. The petitioners have established on a balance of probabilities that, with seven exceptions on 01.2.95 they did not receive any hires after 9.30 a.m. on 31.1.95; and beyond reasonable doubt, that on and after 2.2.95 they received no hires. This was because of threats of violence and not voluntary.

6. On 31.1.95 the 1st Respondent rendered himself liable, as he had instigated those who chased away the petitioners with threats of violence; thereafter the police were guilty of inaction, in circumstances in which they were under a duty to provide reasonable protection to the petitioners; and the 14th and 15th

Respondents, despite knowledge of what was taking place over a long period of time, acquiesced in the treatment meted out to the petitioners. They are all responsible for violation of the petitioner's fundamental rights under Article 12(1), 12(2) and 14(1) (g) read with Article 14 (1) (c) of the Constitution, which violations continue.

7. The statements made in Parliament can be admitted but they must be taken as they appear in Hansard without any gloss being put on them. Statements in Parliament are relevant as facts and not as evidence of the truth of their contents. The statement firstly may be used, not as substantive evidence, but to contradict his evidence given orally or in an affidavit, in judicial proceedings in terms of section 155 (c) of the Evidence Ordinance. Secondly the statement may be used as substantive evidence to establish the intention or motive with which some act was done or statement was made outside Parliament. However this second principle is not being relied on in the instant case but only the first.

Cases referred to:

1. *Faiz v. Attorney-General and Others* S.C. 89/91 S.C. Minutes of 19.11.93.
2. *Upaliratne v. Tikiri Banda and Others* S.C. 86/95, S.C. Minutes of 5.9.93.
3. *Church of Scientology v. Johnson Smith* (1971) 3 NLR 434; (1972) 1 All ER 378 QBD.
4. *J.B. Textiles Ltd., v. Minister of Finance* [1981] 2 Sri L.R. 238,260-1 (CA); (1981) 1 Sri L.R. 156, 161, 164 (S.C).
5. *Strickland v. Mifsui Bonnici AIR* 1935 PC 34, 35.
6. *De Zoysa v. Wijesinghe* (1945) 46 NLR 433,437.
7. *Weerasinghe v. Samarasinghe* (1966) 69 NLR 262, 264.
8. *Schmidt v. Secretary of State for Home Affairs* (1968) 3 All ER 795 (QBD).
9. *Laker Airways Ltd., v. Department of Trade,* (1977) 2 All ER 182 (CA).
10. *Dissanayake v. Kaleel* [1993] 2 Sri L.R. 135.
11. *Jayatilleke v. Kaleel* [1994] 1 Sri L.R. 319.

APPLICATIONS for relief for infringement of fundamental rights.

Tilak Marapone, P.C. with *D. Weerasuriya, N. Ladduwahetty,* and *S. Cooray* for petitioners.

R.K.W. Goonesekera with *J.C. Weliamuna* for 1st to 7th Respondents.

Chanaka de Silva S.C. for 8th to 15th and 17th Respondents.

Faisz Musthapha, P.C. with *Dr. Jayampathy Wickramaratne* and *Gaston Jayakody* for 16th Respondent.

Cur.adv.vult.

November 30, 1995.
FERNANDO, J.

I am in entire agreement with the reasoning, findings and order of my brother Wijetunga.

It is only after judgment was reserved that a question of Parliamentary Privilege arose, because of my brother Perera's views as to the factual effect of the statements made by the 1st Respondent in the course of proceedings in Parliament on 7.2.95, and as to their legal relevance. Since he disagrees with us as to the 1st Respondent's liability, it has become necessary to set down our views as to the conclusions set out in his draft judgment, which I have had the advantage of seeing.

I. THE STATEMENT MUST BE TAKEN AS IT IS

In regard to the factual aspect, Perera, J. interprets and explains the statements made in Parliament, as being a "fighting reply to jibes, or "a political speech", or "a general statement": this, it seems to me, is truly to question proceedings in Parliament, contrary to the very principle he affirms (instead of admitting and acting on them in toto without question, as we should). For that is what is done when it is suggested that what the Member said is not what he really meant, or that it ought not to be taken literally, and that accordingly the balance of probability is not in favour of the Petitioners. That directly contravenes section 3 of the Parliament (Powers and Privileges) Act ("the Privileges Act"). The law is clear: the statements can be admitted, but they must be taken as they appear in Hansard without trying to put a gloss on them.

II. THE EXTENT OF THE PRIVILEGE

The second issue, as to Parliamentary Privilege, is one which no one even mentioned, even in passing. Neither the 1st Respondent nor his Counsel raised it in the Pleadings, in the written submissions, or in the oral argument- although the Court specifically drew the attention of Counsel to the effect of the Hansard extracts on the reliability of the 1st Respondent's affidavit. And they have not sought to raise it even after judgment was reserved.

1. Taking Judicial Notice of the Privilege

There is no dispute that section 9 of the Privileges Act requires the Court to take judicial notice of Parliamentary privileges, immunities and powers. But what those privileges are must be determined according to law. For the reasons set out in this judgment, I am of the view that clearly the Act does not prohibit the admission of the statements made by the 1st Respondent in Parliament, and that seems to be the reason why there was no objection to the admission of the Hansard extracts.

2. Admissibility of the Statement as a Fact

With respect, I cannot agree that any question arises in this case whether those statements "could be relied on as against the 1st Respondent as an **admission** or as evidence of his **state of mind**". The statements are treated by Wijetunga, J, as **facts**, and nothing more; neither directly nor indirectly does he make any comment or criticism as to their accuracy or propriety, or their motivation or effect, or whether they are unjust or unfair; and he does not try to explain or interpret them in any way, or to draw any inferences from them. He adheres to the long-established principle that statements in Parliament are relevant as **facts**; and does not use them as evidence of the truth of their contents.

This principle has been unequivocally recognised in the two precedents mentioned in Perera, J's draft judgment.

In Church of Scientology v Johnson-Smith, [3] Browne, J,said:

"But the Attorney-General limited what he said . . . . He said that [the Hansard] could be read simply **as evidence of fact, what was in fact said in the House, on a particular day by a particular person**. But, he said, the use of Hansard must stop there and that counsel was not entitled to comment on what had been said in Hansard or ask the jury to draw any inferences from it."

Samarakoon, CJ., commented on that passage in ***J.B.Textiles Ltd v Minister of Finance,***[4]

"Even in this case certain excerpts from Hansard were in fact permitted to be admitted in evidence and the Court ruled somewhat inconclusively

that it could be read simply as **evidence of fact**, what was in fact said in the House on a particular day by a particular person."

He went on to say, quite categorically, and leaving no room for doubt:

"Hansards are admissible to prove the course of proceedings in the Legislature (section 57 (4) Evidence Ordinance). They are **evidence of what was stated by any speaker** in the Legislature: *Strickland v Mifsud Bonnici,*[5] *De Zoysa v Wijesinghe,*[6] *Weerasinghe v Samarasinghe,* at 264[7] However, even this use of statements is subject to some qualification. One such is that the statements must be accepted ***in toto***-without question." (at p. 164)

In *Strickland v Mifsud Bonnici,*[5] AIR 1935 PC 34(8) the Privy Council said:

"Further, as regards the reports of debates, it is clear ..... that **they can only be evidence of what was stated by the speakers** in the Legislative Assembly, and are not evidence of any fact contained in the speeches."

Samarakoon, CJ, referred to two other decisions: *Schmidt v Secretary of State for Home Affairs*[8] and *Laker Airways Ltd v Department of Trade.*[9]

In the former, the Home Secretary refused to extend the residence permits of two alien "scientologists", relying on a statement made in Parliament by the Minister of Health setting out Government policy in regard to "scientology". They asked for a **declaration** that the Home Secretary's decision was unlawful and void. The Minister's statement (which included an observation that "scientology" was socially harmful) was used to judge the validity of the Home Secretary's decision.

In the latter, in an action for a **declaration**, the Court of Appeal took into account an announcement made in the House by the Secretary of State in regard to aviation policy, in holding that in nullifying the licence given to Laker Airways, there was an improper exercise by the Secretary of the prerogative power.

In the *J.B. Textiles* case, a business undertaking was vested by a vesting order made in 1976; due to a prorogation, this could not be laid before the National State Assembly within sixty days as required by law; in 1977 there was a change of government; the new Minister of Finance revoked that vesting order, and immediately made another, which was duly laid before the National State Assembly. The company challenged the 1977 order as being *mala fide*. This attack was in two stages: that the 1976 order was *mala fide*, and that the 1977 order was intended to "continue" the 1976 order, and was therefore vitiated by the same *mala fides*. The *mala fides* of the 1976 order was proved by evidence other than statements in the National State Assembly, but to establish that the 1977 order was "linked to the 1976 order, a statement made by the Prime Minister in the National State Assembly was relied on. Samarakoon, CJ, decided that the Hansard could be admitted to prove that link.

Further, despite the statutory Advisory Board holding that the acquistion was unjustified, the Government did not revoke the vesting order. In that connection, Samarakoon, CJ, referred to another statement in Hansard, one made by the Minister of Irrigation as to the reasons for the Government's subsequent refusal to divest the undertaking, in order to contradict the affidavit filed in Court by the Minister of Finance, who gave different reasons (see [1981] 1 Sri LR at 170). He said:

"The two reasons do not tally. I need say no more."

A conclusion which seems applicable here with even greater force, because the affidavit of the Member does not "tally" with **his own** statements in Parliament.

3. Admissibility (a) to contradict, or (b) to prove motive, etc.

These cases illustrate two distinct principles regarding the use of a statement made in Parliament. First, it may be admitted, as evidence of a fact, namely what a Member said; and this may be used, not as substantive evidence, but to contradict his evidence, given orally or in an affidavit, in judicial proceedings. This is in terms of section 155 (c) of the Evidence Ordinance. Second, such a statement may even be used as substantive evidence, to establish the intention or motive with which some act was done, or some statement was made, outside Parliament (as Samarakoon,

CJ, used the Prime Minister's statement to establish the link between the 1977 order and the 1976 order, and thus to prove its *mala fides*). The two decisions of the Court of Appeal in England fall into this category, and are of greater authority than the decision of a single Judge of the Queen's Bench Division in the *Church of Scientology* case.

The view has been expressed that "a complaint of an infringement of a fundamental right made to this Court cannot be founded on what was said or done by a Member of Parliament in the course of the proceedings in the House", and that such statements cannot "be relied on to support a cause of action which arises from something done outside the House". I refrain from comment, because nothing of that kind is being done here. The Petitioners do not seek either to make the 1st Respondent liable for what he said **in Parliament** on 7.2.95, or to rely on his statements ***to support their cause of action.*** On the contrary, they seek to make him liable for what he said and did **outside Parliament,** on another day, one week earlier. They are not being allowed ***to question his statements*** in Parliament, but only to challenge his **affidavit** (and **only** his affidavit) filed **in this Court.** They say, how can this Court accept or act on his **affidavit** in the light of the ***admitted* fact** that he made statements in Parliament which are gravely inconsistent with that affidavit? Thus they rely on his statements ***not to support their cause of action, but to discredit his affidavit.***

Ordinarily I would hesitate to disagree with the considered opinion of Samarakoon, CJ; especially a decision in a case which was argued for twelve days in the Court of Appeal, and for another four in this Court. More so here, without the benefit of an iota of research, or a minute of submissions, by Counsel, upon an issue on which we ought not to have to depend on our own researches. And for that reason I have confined my observations to the two decisions cited by Perera, J., and the precedents referred to therein, and refrain from comment on recent decisions of this Court (*Dissanayake v Kaleel,* [10] *Jayatillake v Kaleel,* [11]) relevant to the liability or penalty to which a Member may be subject in respect of proceedings in Parliament notwithstanding section 3 of the Privileges Act. But in this case we do not have to consider whether Samarakoon, CJ was wrong in regard to the second of the above principles, for this case is covered by the first principle, as the use made by Wijetunga, J, of the Hansard extracts is well within that principle.

4. Form and Result of Proceedings - Irrelevant to Admissibility

I have now to consider the suggestion that the J.B. Textiles case could be distinguished on the basis that Samarakoon, CJ, held that statements in Parliament (really, the National State Assembly) could be admitted because he was dealing with a Certiorari application, where the quashing of an order "does not result in any liability being imposed on a Member of Parliament". This is tied up with another suggestion, that because there is an allegation of the violation of a fundamental right, the Hansard cannot be admitted.

It seems to me that such a distinction introduces two factors which the Privileges Act does not recognise. The immunity conferred by that Act (or the lack of it) does not depend on the *form* of the proceedings in which the issue arises: whether it is an application for Certiorari, Mandamus, or Prohibition, or a fundamental rights application or an action for a declaration, or damages. If the Act confers immunity, that immunity must be given effect to, whatever the *form* of the proceedings. Likewise, that immunity does not depend on the *result* of the proceedings: whether it is the grant of Certiorari to quash, an order of Mandamus, or a declaration of nullity, or damages. If the Act grants immunity, it must be upheld, whatever the *result* of the proceedings.

To put it another way, if the Act does not allow a Member's statement to be "questioned", it cannot be questioned, whatever the form or outcome of the proceedings in which it is sought to be questioned. But if it is used in a manner which does not amount to "questioning" it, then it is admissible, whatever the form or outcome of the proceedings in which it is sought to be used.

Let me illustrate that using the facts of the *J.B. Textiles case*. Suppose that the Minister of Finance declares (outside Parliament) when making a vesting order that the undertaking is being acquired because it is being used in a manner detrimental to the national economy; but states in Parliament, conscious of his duty not to mislead Parliament, that it is because the proprietor is politically opposed to him. Evidence of the latter statement is clearly admissible, under the **first** principle set out above, to contradict the Minister's assertion that he acted in the interests of the national economy, and thus to have the vesting order quashed or annulled.

And it is admissible whether the issue arises in proceedings for Certiorari to quash, Mandamus to divest, a declaration of nullity, a declaration of the infringement of fundamental rights, or for damages; and whatever their outcome. A judge cannot say, when the Hansard is sought to be marked, "I will allow it and act on it, if I am going to grant Certiorari (or a declaration), but not if I decide to grant Mandamus (or damages)".

Suppose, instead, that the Minister refrains from giving any reason when he makes the vesting order. The *J.B.Textiles* case (as well as the two decisions of the English Court of Appeal) is authority for the admission of his statement in Parliament, as substantive evidence, to prove one essential ingredient of the complainant's case: that the vesting order was made *mala fide*; regardless of the form or outcome of the proceedings. But, let me stress, that is the **second** principle, and our decision today does not depend at all on that principle.

This supposed distinction, based on the imposition of "liability" and the *form* of the proceedings, is untenable for another reason. The grant of Certiorari (as in the *J.B.Textiles case*) is today, in public law, indistinguishable from the grant of a declaration in a fundamental rights application. If the quashing of the vesting order in that case involved no imposition of "liability", then equally the grant of a declaration here imposes no "liability" - and that is the first relief which Wijetunga, J, grants as against the 1st Respondent. Although in my view the award of compensation would have made no difference, yet in fact we propose no order for compensation. There can therefore be no valid objection to the grant of that declaration. It must be remembered that the *J.B.Textiles* case dealt with vesting orders made **before** the 1978 Constitution; they were not subject to judicial review on the ground of the violation of fundamental rights. Now, however, Article 126 (3) shows that such a vesting order can be challenged by a writ application to the Court of Appeal, in which the violation of fundamental rights is also duly pleaded; thereupon the whole matter must be referred to this Court. It cannot possibly be argued that in those circumstances this Court could grant Certiorari to quash, but not a declaration of nullity for infringement of Article 12.

It is relevant to mention that in both *Schmidt v Secretary of State for Home Affairs (supra)* and *Laker Airways v Department of Trade*, ***declarations*** were sought, and the Court of Appeal did not consider that this rendered the statements made in Parliament inadmissible.

As to the award of costs, it can hardly be contended that an order for payment of the costs of the litigation is a liability in respect of the statements made in Parliament. There is nothing in the judgment in the *J.B.Textiles* case which made the question of the admissibility of the Hansard depend on the absence of an order for costs. So there can be no objection to the award of costs in this case.

5. Admissibility if there is no other evidence

It is also suggested that Samarakoon, CJ, admitted the Hansard because "Parliamentary intervention was a step in the procedure and an integral part of the acquisition process ..... **Indeed there would be no other evidence** as to this stage of the acquisition process". That is an assumption, and it is plainly contradicted by the facts of that case. The operative *mala fides* of the original vesting order made in 1976 was established by evidence other than statements in the Legislature; showing that there *can* be other evidence. Indeed, Samarakoon, CJ, admitted the Hansard only to establish that there was a link between the the 1976 order and the 1977 order, and there is no reason why that link could not have been established by proof of acts or statements outside the Legislature. The *J.B.Textiles* case cannot be distinguished on that basis.

Indeed, to do that would be wrong in principle. If a statement is protected by section 3 of the Privileges Act, the Court cannot deny such protection simply because there is no other evidence.

III. CONCLUSION

The view taken by Perera, J, seems to be that "Hansard is a closed book as far as the Courts are concerned" (see *[1981] 2 Sri LR at 260-1, CA).* With respect, I would adopt the observations of Samarakoon, CJ, who unequivocally rejected that view:

"The Hansard is the official publication of Parliament. It is published to keep the public informed of what takes place in Parliament. It is neither sacrosanct nor untouchable. Comment and criticism are on a different plane which might give rise to a breach of privilege. That aspect does not arise for decision here. I am of the view that documents P9 and P11 are admissible to prove the statements of the Minister [of Irrigation] and the Prime Minister subject to the rules limiting their use as herein before stated."

In accordance with that decision, we have accepted the statements *in toto*. There was no objection on behalf of the 1st Respondent, to the admission of those extracts, presumably because of that decision. Those extracts have been used, in accordance with the law as authoritatively laid down by this Court, only to contradict the 1st Respondent's affidavit.

It is for these reasons that I find myself unable to agree with Perera, J.

PERERA, J.

I have had the advantage of perusing the judgment of my brother, Wijetunga J. in this case. I am in agreement with the finding that on the proved facts, the Petitioners are entitled to a declaration that their fundamental rights under Articles 12 (1), 12 (2) and 14 (1) (c) read with 14 (1) (g) have been infringed by the 10th, 11th, 13th and 14th Respondents and the reliefs granted to the Petitioners arising from such violations.

I am however unable to associate myself with the finding that the Petitioners are entitled to a declaration that the Fundamental Rights of the Petitioners under Articles 12 (1), 12 (2) and 14 (1) (c) read with 14 (1) (g) have been infringed by the 1st Respondent and the order made against the 1st Respondent for the payment of costs in a sum of Rs. 50,000/- to the Petitioner Society in Application No. 66/95 and the Petitioner Society in Application No. 67/95 for the reasons set out hereinafter.

I might state at the very outset that in my view the Petitioners have failed to establish on the proved facts that the 1st Respondent has acted in violation of any of their Fundamental Rights.

In this case the 1st Respondent has filed an affidavit dated 23.05.95 denying the allegations made against him by the Petitioners. In this affidavit, he has averred that he was invited to be the Chief Guest at the inauguration of a New Taxi Service on 31.01.95 which was to be held at the premises opposite the Air Port. Accordingly, he went to Katunayake around 9.30 a.m. and was the first among the invitees to arrive there. Within a short while, the Transport Manager of the Air Port came with some officials. Then the other invitees, i.e. the 2nd to 6th Respondents who represent electorates in the District and the members of the new Taxi Services also arrived.

Thereafter the Director of the 16th Respondent, welcomed the gathering, followed by the Transport Manager of the Air Port who addressed them on the formalities of the operation of Taxis at the Air Port and explained the requirements in regard to the standard expected of Air Port Taxis. The 1st Respondent and the 2nd to the 7th Respondents spoke a few words. The ceremony was concluded by about 11.00 a.m. In his speech, the 1st Respondent wished the new Taxi Service all success. No statement had been made by anyone that the members of the Petitioner's Societies were U.N.P. stooges etc.

The 1st Respondent has specifically denied that the members of the Petitioners' Societies were asked to leave the premises within 15 minutes, and that if they failed to do so, they would have to face the consequences. The 1st Respondent states that the ceremony was peaceful and that there was no incident of violence or intimidation against the Petitoners whatsoever and that he was in fact unaware the they were even present. He specifically states that the averments contained in paragraph 8 of the Petition which contained allegations against him are false.

The facts set out by the 1st Respondent in his affidavit is supported by the 7th, 10th and 13th Respondents who have filed affidavits substantially corroborating the facts set out by the Respondent. The 1st Respondent's version also finds support in the averments contained in the affidavit filed by a Director of the 16th Respondent, Nandawansa de Silva.

Thus the allegations made by the Petitioners against the 1st Respondent are denied by him and his version finds support in the affidavits filed by the 7th, 10th and 13th Respondents and by a Director of the 16th Respondent.

In response to this denial on the part of the 1st Respondent, the Petitioners have filed a counter affidavit dated 31.05.95, annexing extracts from the Hansard of 07.02.95 (P16) which is a record of the proceedings of Parliament on that date.

Presidents' Counsel on behalf of the Petitioner invited this Court to reject the 1st Respondent's denial and the facts as set out in this affidavit having regard to the contents of P16, a statement made by the 1st Respondent in Parliament on 07.02.95. The relevant extracts from the Hansard P16 have been fully reproduced in the judgment of Wijetunga, J.

As regards the statements attributed to the 1st Respondent in the Hansard referred to (P16), Counsel for the 1st Respondent has in my view, rightly submitted that such statements must be considered in the proper context. The reference to the Katunayake incident in Parliament that day has been triggered off by a statement made by a Member of Parliament based on a newspaper report which appeared in the "Divaina". Counsel submitted that the contents of the said report itself have been proved to be false. There was no reference whatsoever to the 1st Respondent in that report. It was counsel's submission that the 1st Respondent in this instance has merely retorted or given a "fighting reply" to the jibes as is wont to happen in the floor of the House. This he contended was not a considered reply to an adjournment question. It is a political speech which cannot be taken literally as an admission by the 1st Respondent or the accuracy of what was in the newspaper or his involvements in violence on that day. Counsel submitted that the Court should therefore not place any reliance on the contents of P16 and invited the Court to reject the same.

In my view there is much substance in the submission of Counsel on this matter. The Petitioners' allegations against the 1st Respondent remain uncorroborated. I am of the opinion that it would be highly unsafe to tilt the scales in favour of the Petitioner in this case, relying upon, a general statement made by the 1st Respondent in Parliament particularly having regard to the special circumstances in which the 1st Respondent made the statement attributed to him.

Having regard to the facts set out above, I see no compelling reason to reject the averments in the affidavit filed by the 1st Respondent denying the allegations against him, which denial is borne out by the affidavits of several of the Respondents to this Application. I hold therefore, that the Petitioners have failed to prove that the 1st Respondent has acted in violation of any of their fundamental rights.

Be that as it may, in the instant case yet another important issue relating to Parliamentary Privileges and Immunities arise in my view for determination by this Court. The question whether proceedings of Parliament (marked P16) could be relied on as against the 1st Respondent as an admission or as evidence of his state of mind or to discredit the averments in his affidavit filed in Court raises the wider issue of Parliamentary Privileges and Immunities. The Hansard (P16) was produced with the counter

affidavit of the Petitioner and as such the Respondent had no right to file further pleadings in relation to it. Whether there is a specific plea or not, in view of the provisions of Section 9 of the Parliamentary (Powers and Privileges) Act. No. 21 of 1953 (Cap. 283 I. E. C) "All Courts in Sri Lanka are required to take judicial notice of all privileges, immunities and powers of the House".

Section 9 states as follows:

"All Privileges, Immunities, and Powers of the House shall be part of the general and public law of Ceylon and it shall not be necessary to plead the same but the same shall in all Courts in Ceylon be judicially noticed".

Hence, whether the issue is pleaded or not, all Courts are bound to take judicial notice of Parliamentary Privileges and Immunities and to consider whether the reception of any evidence is in violation of any such Privilege or Immunity.

Our law of Parliamentary Privileges and Immunities is contained in the said Act No. 21 of 1953. However, Sec. 7 of the Act states that in addition to the Privileges and Immunities contained in the Act, the House and the Members "shall hold, enjoy and exercise" the Privileges and Immunities for the time being held, enjoyed and exercised by the House of Commons of the United Kingdom and the members thereof.

Section 3 of the Parliamentary (Powers and Privileges) Act lays down the basic rule as to the freedom of speech, debate and proceedings in the House as follows:

"There shall be freedom of speech, debate or proceedings in the House and such freedom of speech, debate or proceedings shall not be liable to be impeached or questioned in any Court or place out of the House."

According to Erskine May the phrase "proceedings in the House" has to be given a wide meaning to encompass not only what transpires in the course of debates but also to include "everything said or done by a member in the exercise of his functions as a member in a Committee of either House, as well as everything said or done in either House in the transaction of Parliamentary business (Parliamentary Practice : Erskine May, 21st

Edition page 92). Therefore the statement attributed to the 1st Respondent made at adjournment time when questions were being answered, comes within the "proceedings of the House". The freedom of speech thus enjoyed by a member of Parliament is absolute, **"subject to the rules of order in debate, a member may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character of individuals; and he is protected by his privilege from any action for libel as well as from any other question or molestation"** (vide Erskine May - page 84).

Statutory recognition is given to this Privilege and Immunity enjoyed by a member in Section 4 of the Parliamentary (Powers and Privileges) Act as follows;

"No member shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of anything which he may have said in the House or by reason of any matter or thing which he may have brought before the House by petition, bill, resolution, motion or otherwise".

These provisions of our Act are derived from Section 9 of the Bill of Rights of 1968 of England which declared that;

"The freedom of speech and debate or proceedings in Parliament, ought not be impeached or questioned in any Court or place outside Parliament".

Therefore the Immunity is not restricted to civil or criminal proceedings but applies in relation to all proceedings in all Courts. It is clear that a complaint of an infringement of a Fundamental Right made to this Court cannot be founded on what was said or done by a Member of Parliament in the course of proceedings in the House. In this case the complaint or the cause of action does not pertain to anything said or done by the 1st Respondent in Parliament. It stems from his alleged statements and acts at the Katunayake Air Port premises. The question to be considered is whether the statement made by the 1st Respondent in proceedings in the House could be relied on to support a cause of action which arises from something done outside the House.

This question was considered in the case of *Church of Scientology of California v Johnson-Smith*[3]. In that case the Defendant, a Member of

Parliament was sued for libel in respect of what was said by him in the course of a television interview. The Defendant raised the plea of fair comment. The Plaintiff then sought to refute this plea *inter alia* by reading extracts from the Hansard to prove malice on the part of the Defendant, Member of Parliament. The Court invited the assistance of the Attorney-General to consider the question whether Parliamentary Privileges might be infringed by the reception of such evidence. Browne J, accepted the submission of the Attorney-General as to the scope of Parliamentary Privilege. He stated as follows: (at page 437)

"I accept the Attorney - General's argument that the scope of Parliamentary Privilege extends beyond excluding any cause of action in respect of what is said or done in the House itself. And I accept his proposition, which I have already tried to quote, that is that what is said or done in the House in the course of proceedings there, cannot be examined outside Parliament for the purpose of supporting a cause of action even though the cause of action itself arises out of something done outside the House. In my view this conclusion is supported both by principle and authority .... I also accept the other basis for this privilege which the Attorney-General suggested, which is, that a member must have a complete right of free speech in the House without any fear that his motives or intentions or reasoning will be questioned or held against him thereafter".

Thus it is seen that the scope of Parliamentary Privilege is not limited to the exclusion of any cause of action in respect of what was said or done in the House itself but extended to the examination of the proceedings in the House for the purpose of supporting a cause of action which itself arose out of something done outside the House. If the principle there enunciated is applied to the facts of this case, the Petitioners cannot rely on any statement made by the 1st Respondent (Member of Parliament) in proceedings in the House to support their complaint of an infringement of a Fundamental Right committed by him elsewhere. The Petitioners would be committing a breach of privilege when they seek to rely on such evidence and I am of the view that this Court should not countenance such a transgression..

The proceedings of Parliament as contained in the Hansard can be used for limited purposes in judicial proceedings. Such use of extracts from a Hansard can never be violative of the freedom of speech enjoyed by a Member of the Parliament which is protected by privilege.

In *J. B Textile Industries Ltd. v Minister of Finance and Planning* [4] this Court held that the Court of Appeal erred in coming to a finding that the Hansard containing statements made in Parliament could not be used by the Petitioners in support of their case as to *mala fides.* It has to be borne in mind that this case was for an application for a Writ of Certiorari to quash a vesting order made by the Minister of Finance under the Business Undertakings (Acquisition) Act No. 35 of 1971. The conclusion of Ranasinghe, J. (as he then was) in the Court of Appeal (1981) 2 Sri.L.R. (p. 238) was that a statement in the Hansard cannot be used for any other purpose besides the use of it to interpret statutes. Samarakoon, CJ. held that this view was erroneous and that Hansards are admissible to prove the course of proceedings in the legislature (Sec. 57 (4) Evidence Ordinance) subject to some qualifications, one being that the "statements must be accepted *in toto*- without question" (page 164). It is clear from his judgment that this could be done only without impinging on the privileges and immunities of a Member of Parliament. He has specifically cited with approval the dictum of Browne, J. in the Church of Scientology Case (*supra*). At page 166 he states as follows:

"Ranasinghe J. has referred to three cases. The first is the case of *Church of Scientology v Johnson-Smith*[3]. The defence was one of qualified privilege. To defeat this plea the Plaintiff sought to establish express malice by reference to Hansard to prove what the Defendant had done and said in Parliament. This attempt was disallowed on the rule that "what is said and done in the House in the course of proceedings there, cannot be examined outside Parliament for the purpose of supporting a cause of action even though the cause of action itself arises out of something done outside the House" *per* Browne, J. **There is no doubt that the use of the passage in Hansard would have made the Defendant liable in damages which he would have otherwise avoided.** Such use would have been a fetter on the freedom of speech in Parliament besides clinching the claims for damages by what he said or did in the House as a Member of Parliament".

It is quite clear that Samarakoon, CJ. adhered to the view that passages in Hansard cannot be used so as to impose thereby any liability on a Member of Parliament "which he would have otherwise avoided". Such use would have been a fetter on the freedom of speech in Parliament". Samarakoon, CJ. appears to have been strongly influenced by the legal background of the acquisition proceedings, to arrive at his conclusion in that case. At page 161 he stated as follows.

"I will first refer to the legal background and then set out the passages in Hansard (P9) relied on and then deal with the use sought to be made of it. The Business Undertakings (Acquisition) Act is one of the most drastic pieces of legislation that was ever placed in our statute book. It provides for the compulsory acquisition by the Government of any business undertaking together with the property necessary for the undertaking by the mere publication in the Gazette of a Primary Vesting Order. The law does not provide any guidelines as to when an acquisition should be permissible, such as the need for a public purpose or even as a sanction for unlawful conduct of the owners. No reason whatsoever need be assigned for an acquisition. When this law was debated in Parliament, the spokesman for the then Government stated that there would be two safeguards against the misuse or abuse of this law. They are first, that Cabinet approval must be given for an acquisition and second that the law has cast a mandatory duty on the Minister of Finance to have the Primary Vesting Order laid before Parliament for its approval within a specified period of time thus providing the opportunity for a full debate on the proposed acquisition. From this it would be seen that Parliamentary intervention is a step in the procedure for acquisition and is an integral part of the acquisition process".

It was because Parliamentary intervention was a step in the procedure and an integral part of the acquisition process that he held that statements in Parliament could be admitted and acted upon *in toto* without question. Indeed there would be no other evidence as to this stage of the acquisition process. Furthermore, an application for a Writ of Certiorari does not result in any liability being imposed on a Member of Parliament. The Writ of Certiorari is only an instrument of judicial review of administrative action and if issued it only results in the impugned administrative/ministerial act being quashed. On the other hand if a statement made by a Member of Parliament, in Parliamentary proceedings is used to support a finding that such Member committed an infringement of the Fundamental Right of a person outside Parliament, that would amount to a violation of the unfettered (except by rules of order in debate) freedom of speech enjoyed by a Member of Parliament and may amount to a breach of privilege which is a matter exclusively within the jurisdiction of the Parliament itself.

In point of fact I have failed in my endeavours to discover a single decided case in which a liability has been imposed on a Member of Parliament.

I therefore hold that on the proved facts the Petitioners in both applications have failed to establish that their rights under Article 12 (1), 12 (2) and Article 14 (1) (c) read with Article 14 (1) (g) have been violated by the 1st Respondent in the instant case. The reliefs prayed for by the Petitioners in both Applications against the 1st Respondent are accordingly dismissed with costs.

After I prepared the judgment in draft, I have had the benefit of seeing the judgment in draft of my brother Fernando, J. which has been written upon a perusal of my draft judgment. Since, certain words in my judgment have been reproduced in isolation by Fernando, J. and made the subject of specific comment, I have thought it fit to briefly elucidate some matters relevant to the foregoing reasoning.

I do not agree with the statement of Fernando, J. that the question of Parliamentary privilege does not arise for consideration in this case since it was neither pleaded by the 1st Respondent in his pleadings nor urged by his Counsel in submissuons.

Learned Counsel for the 1st Respondent urged on a factual basis that no reliance be placed on the statements alleged to have been made by the 1st Respondent in Parliament. The matters urged by learned Counsel as to the factual basis have been dealt with by me in my judgment. I have made the comments reproduced by Fernando, J. as an assessment of the circumstances in which the statements attributed to the 1st Respondent were made in Parliament. By doing so, I have not ventured to "question proceedings in Parliament" as stated by Fernando, J. The prohibition as to questioning of proceedings in Parliament, outside the House, is based on the fundamental premise of the freedom of speech enjoyed by every Member of Parliament which is protected by absolute privilege and immunity.

My comments do not in any way detract from the freedom of speech enjoyed by the 1st Respondent as a Member of Parliament in relation to proceedings of Parliament. On the contrary, they are in support of the freedom of speech and the absolute privilege enjoyed by a Member of Parliament. Therefore my comments cannot contravene the prohibition against questioning of proceedings in Parliament.

Section 9 of the Parliamentary (Powers and Privileges) Act specifically requires "all Courts" to take judicial notice of all privileges and immunities of the House. Therefore the "question" of Parliamentary Privilege arises by operation of Law when a liability is sought to be imposed on a Member of Parliament which may be an infringement of the freedom of speech enjoyed by such a member of Parliament. It is in this context that I have set down in this judgment the basis and the extent of the freedom of speech and the corresponding absolute privilege and immunity enjoyed by a Member of Parliament.

Further I cannot agree with Fernando, J. that "the statements (in the Hansard) are treated by Wijetunga, J. as facts and no more". Indeed, they are "facts ". Under the Evidence Ordinance anything capable of being perceived by the senses and a mental condition of which a person is conscious is a "fact" (section 3) . But it has to be borne in mind that these facts are used as evidence by the Petitioners. The evidential purpose as noted by Fernando, J. is to "discredit" the "affidavit" of the 1st Respondent. In the language of the Evidence Ordinance (section 155 (c) the Petitioners are seeking to "impeach" the credit of the 1st Respondent by relying on the statements in Parliament said to be inconsistent with the affidavit filed by him in Court. The freedom of speech guaranteed to every Member of Parliament in proceedings of Parliament, would be illusory and devoid of content if a Member's credit is to be impeached in subsequent judicial proceedings on the basis of what was said by him in the House. The law as to freedom of speech and the corresponding absolute privilege and immunity would be on a fragile basis if it's content is that a Member may state what he thinks fit in Parliament but face the consequence of what he has stated in subsequent judicial proceedings instituted against him. If such an interpretation is given the freedom of speech guaranteed by the Bill of Rights of 1688 in England and sections 3 and 4 of our Act would itself be in jeopardy and become qualified.

In my view statements in Hansards may be used as evidence in legal proceedings, as permitted by law, subject to the specific limitation that the freedom of speech guaranteed to a Member of Parliament is not thereby violated. In this instance when the Petitioners seek to use the Hansard to contradict the 1st Respondent and to impeach his credit they are infringing the absolute privilege and the immunity enjoyed by the 1st Respondent which is a corollary of his freedom of speech in Parliament. Therefore, "the use made of the Hansard", by

the Petitioners cannot be "perfectly proper" as stated by Fernando, J. However it has to be noted that further down in the judgment Fernando, J. has stated that "it is unnecessary to decide in this case whether a statement made in Parliament can be used to establish the violation of a fundamental right". He has also stated "that the issue involves intricate questions of law which can be determined only after a full argument". He has not stated what these "intricate questions of law" are. These comments are inconsistent with the specific finding already made by him, that the use of the Hansard by Petitioners to discredit the affidavit of the 1st Respondent and thereby to support a decision against the 1st Respondent that he has infringed a fundamental right of the petitioners , is "perfectly proper". It appears that Fernando, J. has attempted to sever the stage of discrediting the affidavit of the 1st Respondent from the stage of entering a finding against him that he infringed the fundamental rights of the petitioners. These two are stages of a single process of deciding on the complaint made to court by the Petitioners that the 1st Respondent infringed their fundamental rights and should therefore be held liable to compensate them by paying damages in a sum of Rs. 40,000/- each per month and further damages for violation of their Fundamental Rights. It is clear from the judgment of Wijetunga, J. and the evidence in the case is equivocal and that the finding against the 1st Respondent is made on the basis of the statements made by him in Parliament. In other words, the scale is tilted against the 1st Respondent on the basis of these statements alleged to have been made by him in Parliament. If so, I cannot comprehend the comments of Fernando, J. that these statements are not relied on by the Petitioners to support their cause of action against the 1st Respondent. Indeed, the Petitioners have produced the Hansard with their counter affidavit as evidence against the 1st Respondent thereby and to support their complaint to court and claim for damages against the 1st Respondent. In my view, it is here that the Petitioners committed a breach of the absolute privilege and immunity enjoyed by the 1st Respondent. I am further of the view that the court should not accede to such a breach of privilege by relying on the statements as against the 1st Respondent.

I have in this judgment referred to the judgment of Samarakoon, C.J. in the *J.B. Textiles* case *(supra)* firstly to demonstrate that he has accepted the decision of Browne, J. in the *Church of Scientology* case *(supra)* and secondly to distinguish the nature of proceedings in the

J. B. Textiles case with the nature of proceedings in the instant case. Fernando, J. appears to have misunderstood what has been stated by me when he drew the following inference;" Perera, J's view, therefore necessarily means that it would be legitimate to exclude the Hansard extracts in a fundamental rights application, if they are relied on to prove a violation for the purpose of obtaining only a declaration (which is the first relief granted in this case)". **The intrinsic nature of a particular proceeding has to be determined by the relief sought from court by the applicant in that case and not from the relief that is finally granted by Court. Such a test is vital in considering whether any item of evidence adduced by a party could be acted upon by Court.** It is in this context that I noted that in an application for a Writ of Certiorari (*J.B. Textiles case*) a Petitioner is only seeking to quash the impugned order and not to impose any liability on the officer who made that order. Fernando, J. has made the point that a Writ of Mandamus has also been prayed for in that case "and if granted there would have been a duty which is a liability to act in a particular way under pain of contempt". A writ of Mandamus lies only to discharge a Public or Statutory Duty. It is to be borne in mind that no personal liability whatsoever is cast on the particular authority in such a proceeding. An order for costs is made by court in all cases. Surely, the fact that an order for costs is made cannot be the determinant of the nature of a particular proceeding. It is because of the fact that there is no personal liability that is sought to be imposed in an application for a Writ of Certiorari or for that matter a Writ of Mandamus that the Court of Appeal (Appellate Procedure) Rules 1990 published in Government Gazette No. 645/4 of 15.1.1991 provides (Rule 5 (2)) that a public Officer may be made a Respondent in an application for a Writ of Certiorari by a reference to his official designation only (and not by name) . Rule 5 (3) (c) provides that where the public officer who is a Respondent ceased to hold office pending the proceedings, his successor in office will be bound by the order finally made by Court. Such a provision is there in the Rules in relation to an application *inter alia* for a Writ of Certiorari and a Writ of Mandamus for the simple reason that no personal liability is sought or imposed on an officer whose order is challenged in such an application. On the contrary where there is an infringement or an imminent infringement of fundamental rights the person affected seeks "relief or redress in respect of such infringement" (Article 126 (2) of the Constitution) The relief or redress sought is never limited to a declaration but extend to claims for compensation and damages against the Respondents, as in this case. Rule 44 (1) (b)

of the Supreme Court Rules 1990 published in Government Gazette 665/32 dated 7.6.91 requires an applicant to "name as Respondents ..... the person or persons who have infringed or are about to infringe such right". This requirement has been placed since the applicants invariably claim relief personally as against the Respondents. Thus the two types of proceedings are intrinsically different. It is in this context that I have accepted the dictum of Browne, J. and the comments made by Samarakoon, C.J. in affirming that *dictum.*

Further, I cannot agree with the observation of Fernando, J. that "the guarantee of equality in Article 12 seems . . . . . to be a superior norm to the law governing Parliamentary Privilege". An observation as to what is higher and what is lower, must be made only upon a full evaluation of its implications and then too only if it is strictly necessary to arrive at a final decision in the case. To my mind, the law as to Parliamentary Privilege guarantees to a Member of Parliament the full freedom of speech subject to rules of Debate and Order in the House. This freedom is the cornerstone of a democratic Parliamentary system. It is for this reason that the freedom of speech has been guaranteed by the Bill of Rights which dates back to 1688. The Right of Equality basically guarantees to all persons "equality before the Law" and "the equal protection of the Law" (Article 12(1) of the Constitution). The term of "Law" is used in its widest sense and would include the Law of Parliamentary Privilege. To say the least, an applicant who is pleading a case of equality before the law cannot urge that the Law of Parliamentary Privilege should not apply in relation to his case. Therefore, I do not feel inhibited in applying the Law of Parliamentary Privilege in deciding on this application especially so when the law specifically requires the Court to take judicial notice of such privilege.

Finally I wish to state that I am unable to agree with the view expressed by Fernando, J. that the question of Freedom of Speech in Parliament and of the absolute privilege and immunities enjoyed by a member does not arise for consideration in this case where a Hansard is used as evidence against the 1st Respondent who is a Member of Parliament. It is to be noted that Counsel for the 1st Respondent has specifically submitted that the contents of the relevant Hansard should not be acted upon as against the 1st Respondent. Hence the observations of Fernando, J. that the 1st Respondent did not object to any reference being made to Hansard extracts is in my view incorrect.

The ratio in the *J. B. Textiles* case (*supra*) does not apply to the facts and circumstances of this case in view of the distinct difference in the respective nature of the proceedings and the claim of the Petitioners for compensation against the 1st Respondent.

For the foregoing reasons, I cannot agree with any of the comments made by Fernando J. I see no basis to depart from my conclusions stated on a matter in which the Court is bound to take judicial notice.

WIJETUNGA, J.

These two applications were taken up for hearing together, of consent, as they relate substantially to the same matter and the Respondents in both applications are the same.

The 1st to 62nd Petitioners in Application No. 66/95 are members of the United Airport Taxi Services Society Ltd. ("UATSSL), the 63rd petitioner and the 1st to 29th petitioners in Application No. 67/95 are members of the Airport Taxi Services Co-operative Society Ltd. ("ATSCSL"). the 30th petitioner.

The two societies had entered into agreements with the Airport and Aviation Services (Sri Lanka) Ltd., the 14th Respondent, to enable their members to provide taxi services for passengers disembarking at the Colombo International Airport, Katunayake ("Airport"), for a period of 6 years commencing from 1.1.91. The said agreements are valid until 31.12.96. A third society by the name of Airport Taxi Services Society Ltd. ("ATSSL") too had entered into a similar agreement with the 14th Respondent. These three societies had 200 taxis operating at the Airport and were the only taxis so permitted by the 14th Respondent at the time. A monthly fee of Rs. 1000/- was payable in respect of each vehicle. It is common ground, however, that the 14th Respondent was at liberty to provide similar services itself, or through other persons or bodies, by means of similar agreements or otherwise.

In terms of the said agreements and the other arrangements made between the parties from time to time, the members of ATSSL were allocated numbers from 1 to 63, ATSSL from 64 to 115 and UATSSL from 116 to 200. Passengers needing the services of a taxi were re-

quired to obtain such services from the counter of the 14th Respondent, which would allocate a taxi on a duty turn commencing from number 1 and ending at 200, so as to ensure that the services of all 200 taxis were fairly and equally distributed.

The agreements between the parties included the following covenants:

"1. The Company will operate a taxi information counter. The passengers wishing to obtain a taxi will indicate his/her destination to the officer at this counter. Thereupon the passenger will be provided with a coupon which indicates the destination and the standard rate to that destination. thereupon the passenger will give one copy of this coupon to the taxi despatcher of the Operator and the taxi despatcher shall assist the passenger into the taxi first in line at the 'taxi stall' immediately in front of the terminal area. The despatcher shall thereupon signal by suitable method to the next taxi in line.

2. .....

.....

3. The Manager [of the Company] shall maintain performance records of each taxi authorised to operate at the Airport and shall inform the Operator of the nature of the performance. The performance will be recorded on the prescribed form a copy of which will from time to time be sent to the Operator. Renewal of this contract will depend on the performance level attained by each taxi."

The 14th Respondent has made no complaint about the manner in which the petitioner-societies and their members discharged their obligations under the agreements.

The petitioners claim that the members of UATSSL and ATSCSL were predominantly supporters of the United National Party ("UNP"), while the members of ATSSL were predominantly supporters of the People's Alliance ("PA"). They further state that the vast majority of the membership of the two petitioner-societies worked for the UNP at all elections including the last General Election and the Presidential Election and it was well known that they engaged themselves actively in the aforesaid election campaigns.

The petitioners allege that in January 1995, they became aware of a plan to deprive them of engaging in their lawful occupation, in the exercise of their rights in terms of the said agreements to provide taxi services at the Airport, and to substitute in their place, the supporters of the 1st to 7th Respondents, and of the PA to provide these services. In particular, they became aware of a move by the 1st to 7th Respondents, together with other supporters of the PA, to hold a public meeting on 31.1.95. at the premises of the Airport and to intimidate the petitioners and members of the two petitioner-societies, so as to chase them away and prevent them from operating taxi services at the Airport.

On receipt of this information, and in anticipation of violence directed towards them. they met Mr. Wijepala Mendis, Member of Parliament for the Gampaha District on 30.1.95 and appealed to him to obtain police protection at the venue of the meeting scheduled for 31.1.95. The petitioners claim that, in consequence of their representations, Mr. Mendis communicated with the Inspector-General of Police requesting that adequate security be provided to the petitioners and members of these two societies. The petitioners also appealed to the 15th Respondent, the Chairman of the 14th Respondent, by letters dated 31.1.95 (P2) apprising him of the developments and requesting that adequate steps be taken *inter alia* to provide security for the members and their vehicles in terms of their agreements.

On 31.1.95 the 1st to 7th Respondents held the public meeting as scheduled at the premises of the Airport. The main theme at this meeting was that the members of the two petitioner-societies were supporters of the UNP and should therefore be prevented from operating taxis at the Airport. The petitioners claim that the 1st Respondent addressed a gathering of about 300 to 400 persons and stated that the members of these two societies were UNP stooges who had earned enough during the last several years and that they should take their vehicles and leave the Airport premises within 15 minutes, failing which they would have to face grave consequences. The 7th Respondent too made a vociferous speech thereafter on similar lines. They also claim that several armed and masked thugs, including one who got on top of a Pajero vehicle bearing No. 64-1585, were in the vicinity using abusive language and threatening the petitioners and other members of the two societies who were present to leave the place immediately before they were set upon and their vehicles smashed up and damaged.

The petitioners further state that though there were around 150 to 200 policemen, including the 10th to 13th Respondents and several security officers of the 14th Respondent on duty at this location, none of them made any attempt to dissuade the speakers from inciting the crowd or the thugs from intimidating their members.

They, therefore, had no alternative but to leave the premises, as the police officers present did not appear to take any steps to afford them protection. They have annexed to their petitions, marked P3 (A) and P3 (B), reports pertaining to the said meeting as appearing in the 'Divaina' of 1.2.95 and the 'Sunday Leader' of 5.2.95. They have also produced marked P4 (A) a copy of a complaint made to the police in regard to the incidents of 31.1.95.

The petitioners further state that the armed thugs who intimidated the members of the two petitioner societies on 31.1.95 continued to be in the Airport premises even thereafter, indeed even as at the date of these applications, preventing their members from entering the Airport and engaging in their occupation. The police officers and the security personnel of the 14th Respondent who were detailed for duty at these premises did not take any preventive action.

Several complaints have been lodged at the Katunayake Police Station by the petitioners and other members of these two societies pertaining to the aforesaid intimidation and wrongful restraint but the police have failed to take any action. The petitioners have annexed marked P6 (1) to P6 (49), receipts obtained from the police in proof of the fact that they have made such complaints to the police. They have also complained to the 14th Respondent in this connection and have produced a copy of that letter dated 8.2.95 marked P6. They further state that they have written to the 8th and 9th Respondents and appealed on several occasions to the 10th, 11th, 12th and 13th Respondents to take necessary action against those responsible, but these Respondents, being influenced by the 1st to 7th Respondents, have failed to take any action on the several complaints and appeals made by them. They have produced marked P6 a copy of a letter dated 3.2.95 written to the 15th Respondent by their lawyer, in this connection. They have also annexed two other affidavits marked P10 and P10 from two of their members who are taxi drivers.

The petitioners state that meanwhile, the 14th Respondent has permitted the members of the 16th Respondent to provide taxi services at the Airport. They have produced marked P12 a photo copy of a memorandum distributed by the 14th Respondent announcing the mobilization of this new taxi service with effect from 1.2.95. The 16th Respondent company comprises of 400 members, who the petitioners claim are supporters of the PA and have benefitted in this way due to the influence exerted on the 14th and 15th Respondents by the 1st to 7th Respondents. The Chairman of the 16th Respondent company is the 7th Respondent. The Secretary of the company, they state is one Felician Fernandopulle, the brother of the 1st Respondent. They have annexed marked P13, a copy of a news report appearing in the 'Dinamina' of 1.2.95 which makes such reference. The petitioners further state that a few members of their societies who are suporters of the PA have also been included as members of the 16th Respondent company.

The petitioners allege that as they are thus prevented from entering the Airport to perform their services in terms of the agreements, the taxi services at the Airport are now exclusively performed by the members of the 16th Respondent who are all supporters of the 1st to 7th Respondents and the PA. They claim that the 1st and 7th Respondents have brought pressure to bear on and influenced the 8th to 13th Respondents and the 14th and 15th Respondents to achieve this objective.

By reason of such conduct which constitutes administrative and/or executive action on the part of the 8th to 15th Respondents, the petitioners complain of the infringement of their fundamental rights under Articles 12(1). 12 (2) and 14 (1) (g) of the Constitution, by the Respondents.

The petitioners state that on an average each of them earned about Rs. 40,000/= per month by providing the taxi services at the Airport and they have been deprived of this income commencing from 1.2.95. The monthly revenue reports for July and August, 1994, prepared by the 14th Respondent have been produced in support.

Leave to proceed has been granted in respect of the alleged in-

fringement of Articles 12(1), 12 (2) and 14 (1) (g) of the Constitution. read with Article 14(1) (c).

The 1st Respondent by his affidavit dated 23.5.95 whilst denying the allegations against him, states that he was invited to be the chief guest at the inauguration of the new taxi services on 1.2.95 which was to be held at the premises opposite the Airport. Accordingly, he went to Katunayake around 9.30.a.m. and was the first among the invitees to arrive there. Within minutes, the Transport Manager of the Airport came with the officials. Then the other invitees, i.e. the 2nd to 6th Respondents who are Members of Parliament or Provincial Councillors from the District and the members of the new taxi service also arrived.

Nandawansa de Silva, a Director of the 16th Respondent, welcomed the gathering. Thereafter, the Transport Manager of the Airport addressed them on the formalities of operation of taxis at the Airport and explained the requirements in regard to the standard expected of Airport taxis. The 2nd to 7th Respondents and the 1st Respondent himself spoke a few words. The ceremony was concluded by about 11.a.m. In his speech, he wished the new taxi service all success. Nobody said that the members of the petitioner-societies were UNP stooges, etc. The 1st Respondent specifically denies that the members of the petitioner-societies were asked to leave the premises within 15 minutes, failing which they would have to face the consequences. He claims that the ceremony was peaceful and that there was no incident of violence or intimidation against the petitioners whatsoever and that he was unware that they were even present.

The averments contained in paragraph 8 of the petition, he states, are false to the knowledge of the petitioners. In that paragraph in S.C. No. 66/95 the petitioners allege that:

"The 1st Respondent addressed a gathering of about 300 to 400 persons and stated that the members of the 63rd Petitioner Society and those of the Airport Taxi Services Co-operative Society Ltd, were UNP stooges who had earned enough during the last several years and that they should take their vehicles and leave the Airport premises within 15 minutes. He also stated that they would otherwise have to face grave consequences. Thereafter the 7th Respondent made a

vociferous speech in which he too in a very intimidatory manner denounced the members of the aforesaid two Societies stating that they were supporters of the UNP and enemies of the people and called upon them to immediately leave the Airport premises threatening that or else their vehicles would be smashed up. Meanwhile a masked thug got on top of a Pajero vehicle bearing number 64-1585 and shouted out ordering the aforesaid members to immediately leave the place before they were set upon and their vehicles were smashed up."

The petitioners and any other persons entitled to operate taxis, he says, were not prevented from operating taxis. The 10th to 13th Respondents have never been influenced by him or the 2nd to 7th Respondents to desist from taking action on complaints allegedly made by the petitioners. Nor have his vehicles been used to intimidate taxi drivers.

The new taxi service was introduced in a manner authorised by law and without any political influence as alleged by the petitioners. He denies that all 400 members thereof are supporters of the PA. He claims that the petitioners have been politically motivated to make false allegations against him and he has not violated any of the fundamental rights of the petitioners.

The 2nd to 6th Respondents too, while denying the allegations contained in the petitions, state that they have perused the affidavits of the 1st and 7th Respondents and they are in agreement with the averments contained therein. They further state that each of them spoke a few words and wished the new taxi service all success and thanked those who invited them for the ceremony. They also deny that they violated the fundamental rights of any of the petitioners.

Learned President's Counsel for the petitioners conceded during the hearing that there was no evidence of any involvement by the 2nd to 6th Respondents in the alleged violation of the petitioners fundamental rights and stated that he was not seeking any relief against them. The allegations against them must, therefore, be rejected.

The 7th Respondent who is the Co-ordinating Secretary to the Deputy Minister of Planning, Ethnic Affairs and National Integration (the 1st

Respondent) while denying the allegations against him, states that he too is in agreement with and adopts the averments contained in the affidavit of the 1st Respondent.

He further states that the Colombo International Airport Taxi Services (Pvt.) Ltd. (16th Respondent) was incorporated under the Companies Act on 3.1.95. He is the Chairman/Director of the company. The company applied to the 14th Respondent for permission to run a taxi service at the Airport which was approved. Thereafter an agreement was entered into between the 14th and 16th Respondents. The 14th Respondent allocated numbers from 200 (*sic*) to 600 to the 16th Respondent company. Permission was granted to operate the taxi service from 1.00 a.m. on 1.2.95. A simple ceremony was organised on 31.1.95 to inaugurate the new taxi service at the Airport. He invited the 1st to 6th Respondents for the inauguration ceremony. The 1st Respondent was to be the chief guest. Officials of the Airport authorities and the Katunayake Police were also informed about the ceremony.

The rest of the averments of his affidavit are substantially the same as those of the 1st Respondent. He denies that he made a vociferous speech as alleged by the petitioners or that any threats were directed by him at the petitioners. He says that he left the venue around 11.15.a.m. However, consequent to the complaint marked P4 (A) [of 1.2.95], he made a statement to the Katunayake Police who were investigating the said complaint, denying the allegations.

Nandawansa de Silva aforementioned, a Director of the 16th Respondent, has filed affidavits for and on behalf of the 16th Respondent. The contents of his affidavits too are substantially the same as those of the 1st and 7th Respondents, except that he adverts to matters pertaining to the formation of the two petitioner-societies and the events leading to the inauguration of the taxi service on 31.1.95. He also mentions that the 16th Respondent, by letter dated 11.1.95 (16R5), applied to the 15th Respondent for the operation of a taxi service. This request was recommended by the 1st Respondent. The 14th Respondent, by its letter of the same day (15 R6) informed the 7th Respondent that the 15th Respondent had granted the necessary approval.

Two of the police officers present, namely the 10th Respondent who is the Senior Superintendent of Police, Negombo Division and the 13th

Respondent who is the Chief Inspector of Police, Katunayake Police Station, have also filed affidavits supporting the version of the 1st to 7th Respondents. They state that no information had been received by the police of any plan to deprive the petitioners of engaging in their lawful occupation or to permit other persons to operate taxis in their place or to chase away any persons thereby preventing them from operating their taxi service. They further state that they received P2 (dated 31.1.95) only on 7.2.95, but received instructions from the Deputy Inspector-General of Police (Western Province-Northern Range) that the 1st and 2nd Respondents and several other members of Parliament were to be present at the Airport on 31.1.95 in connection with a new taxi company commencing operations from the Airport and to provide adequate security. Accordingly, steps were taken to deploy additional police officers and to provide adequate security to all persons who would be present on this occasion. No information had been received by the police of any anticipated violence against the petitioners; nor had approval been sought or granted to any person to hold a public meeting at the Airport on this day. They were present at the Airport for supervising the security that was being provided and state that around 80 police officers from the Negombo and Katunayake Police Stations had been deployed at the Airport premises for this purpose.

They state that an officer of the 14th Respondent addressed the taxi operators of the new company (16th Respondent) as to the expected standards of conduct and other operational matters. Thereafter the officers of the 14th Respondent commenced inspection of the vehicles of the new taxi operators. At this time they saw the 1st and 2nd Respondents and the others speaking to the crowd that had gathered around them a short distance away from the place where the vehicles were being inspected. They specifically state that they did not hear any of the persons asking any taxi operator to leave the Airport premises or threatening that their vehicles would be smashed up. They deny that there were masked or armed thugs present or that any incidents leading to a breach of the peace took place on that day. Nor did they observe a mass exodus of taxi operators: no complaints of any such incidents were made to any officer on that occasion. They however admit that the complaint marked P4A had been made to the Katunayake Police on 1.2.95.

Several complaints corresponding to P6 (1) to P6 (49), made at the Katunayake Police Station between 1.2.95 and 10.2.95, have been produced marked 13R1 to 13R49, but they deny that the police have not taken any action thereon. They state that investigations have been conducted into all such complaints but most of the complaints relate to acts done by unidentified persons; investigations carried out so far had not revealed any evidence regarding the occurrence of such incidents or the identity of any of the persons allegedly responsible for such incidents.

They state that subsequent to these complaints police patrols in the Airport premises have been intensified but no such incidents as are alleged had been detected; nor have any masked or armed persons been seen by the officers on duty. In any event, all vehicles entering the Airport premises are checked by the police officers.

The 13th Respondent further states that, prior to the making of these complaints, two police officers were placed on duty at the Arrivals Terminal of the Airport (where taxi operators generally operate from) during every 8 hour shift, round the clock. Subsequent to the said compaints, five police constables and one Sub-Inspector of Police have now been placed on duty at the Arrivals Terminal during every eight hour shift, but no incidents as alleged have been detected.

The Respondents have also submitted an affidavit from the Manager of the 14th Respondent. He too denies that any public meeting was held at the Airport on 31.1.95 or that any incidents of the nature referred to by the petitioners took place on this day at the Airport premises.

He states that on 31.1.95 the members of the 16th Respondent produced 38 vehicles for inspection and Turn Numbers 201 to 238 were issued to these vehicles. At the outset, the Assistant Manager addressed the prospective operators and drivers and read out and explained the instructions that have to be adhered to by taxi operators at the Airport. He was present at this time supervising the activities that were taking place. He noticed that the 1st, 2nd, 4th and 7th Respondents were present there. Around 10 a.m., the Assistant Manager commenced the inspection of vehicles under his supervision, along the

traffic lanes adjoining the Airport taxi park. During this time, he noticed the 1st, 2nd, 4th and 7th Respondents talking to the persons who were gathered around them, a short distance away from the place where the inspection of vehicles was being carried out. He did not notice any commotion of any masked or armed persons. Nor did he notice any mass exodus of taxis of the three companies which had subsisting agreements with the 14th Respondent. There was no interruption or disturbance whatsoever to the inspection of vehicles that was being carried out at the time. About one and a half hours later, he noticed that the 1st, 2nd and 4th Respondents were not among the persons present. The inspection of vehicles was continued after the lunch break and thereafter the agreement was signed between the 14th and 16th Respondent companies. He further states that no complaints of threats or harassment were received by him or the Duty Manager at the Airport on 31.1.95. He adds that the Turn Numbers issued to the members of the two petitioner societies are still valid and their members are free to use their right to obtain their turns in terms of the agreement entered into with the respective companies.

Had the matter rested at that, it was arguable that there was no reason to disbelieve the 1st and the 7th Respondents' version and that the petitioners had failed to establish their allegations of instigation on a balance of probability. However, what happened thereafter significantly changed the position in regard to the reliance that could be placed on the 1st respondent's affidavit.

There was a news item in the 'Divaina' newspaper of 6.2.95 headlined "වෙස්මුහුණු බැඳ පැජරෝවල යද්දී පොලිසිය අන්ධ වෙයි" .Police turn a blind eye while masked (persons) go about in Pajeros", which referred to acts of thuggery in the Katunayake area. This news item was referred to in Parliament on 7.2.95. In reply to the 1st respondent's affidavit denying the remarks attributed to him, the petitioners filed a counter-affidavit dated 31.5.95 annexing extracts from the Hansard of 7.2.95 (P16) which records the following exchanges:-

"ගාමිණී ජයවික්‍රම පෙරේරා මහතා

ගරු නියෝජ්‍ය කථානායකතුමනි, අපේ හොරෙයි ඔය පැත්තේ පත්‍රයක්. "දිවයින" පත්‍රය පෙබරවාරි 6 වනදා "දිවයින" පත්‍රයේ පළවී තිබෙන්නේ මොකක්ද? "වෙස්මුහුණු බැඳ පැජරෝවල යද්දී පොලිසිය අන්ධ වෙයි" හේතුව මොකක්ද? කට්‍යුනායක ගුවන්

තොටුපළේ වාහන තබා ගෙන ඉන්නා ටැක්සි රියදුරන්ට වෙඩි තබලා උඩට වෙඩි තබලා එළෙව්වා. පොලිසියේ පැමිණිලි තබා තිබෙනවා. (බාධා කිරීම්) පොලිසිය පැමැණිලි දාලා ඇමතිතුමනි. (බාධා කිරීම්)

ගරු ජයරාජ් ප්‍රනාන්දුපුල්ලේ මහතා

කටුනායක ගුවන් තොටුපළේ හිටියේ කවුද ? හොර බළල්ලු හිටියේ.

මිනිමරුවෝ හිටියේ. (බාධා කිරීම්) ඔවුන් තමයි අපේ කොල්ලන්ට මැරුවේ. ඔවුන් තමයි අපේ කොල්ලන් උස්සා ගෙන ගියේ. ඒ ටැක්සිකාරයන් තමයි. තමුන්නාන්සේ දන්නේ නැතිව කථා කරන්න එපා. අහන්න, හිටපු ඇමති ජෝශප් මයිකල් පෙරේරා මන්ත්‍රීතුමාගෙන්. එයා කියයි. තමුන්නාන්සේ දන්නේ නැතිව කථා කරන්න එපා. (බාධා කිරීම්) ඔය කටුනායක ගුවන් තොටුපළේ ටැක්සිකාරයෝ තමයි දරුමරුවෝ. මිනිමරුවෝ. ඒ අය තමයි අපේ කොල්ලන් ඉස්සුවේ. අපේ කොල්ලන් පිළිස්සුවේ. අපේ කොල්ලන්ට ලේබල් ගහලා ගහේ දැම්මේ කටුනායක ගුවන් තොටුපළේ ඒ රියදුරන්ය කියන එක මතක තබාගන්න. (බාධා කිරීම්) බබා වගේ කථා කරන්න එපා. තමුන්නාන්සේලා වරද්ද ගන්න එපා. මිනිමරුවෝ වෙනුවෙනුයි ඔය කථා කරන්නේ. ගුවන් තොටුපළේ සිටි ඒ ටැක්සිකාරයෝ මිනිමරුවෝ. ජෝශප් මයිකල් මන්ත්‍රීතුමාත් ඒ බව දන්නවා. එයාගේ මිනිස්සුන්වත් මැරුවා. (බාධා කිරීම්) බබා වගේ කථා කරන්න එපා. මිනිමරුවන්ගේ පැත්තට කථා කරන්න එපා. .....

ගරු ජයරාජ් ප්‍රනාන්දුපුල්ලේ මහතා

බය නෑ. මිනිමරුවන්ට එළෙව්වා. (බාධා කිරීම්) ජෝශප් මයිකල් මන්ත්‍රීතුමාගේ මිනිසුන්වත් මැරුවා උන්. (බාධා කිරීම්) .....

.....

ආර්. ඒ. ඩී. සිරිසේන මහතා

මේ රටේ පෙරේදා කටුනායක ප්‍රදේශයේ ඇති වූ සිද්ධිය - පැජරෝවලින් ගිහින් ඒ කළ රහපෑම - හතරදෙනාම සුරයෝ චිත්‍රපටයයි මේ රහපාන්නේ කියා ඒ පළාතේ මිනිසුන් බැලුවා බලනකොට ඒකට චිත්‍රපට නිෂ්පාදකයෙකු සිටියා. නළුවෙකුත් සිටියා. දේශපාලනඥයෝත් සිටියා. මිනිසුන් සිතුවේ මේ කටුනායක සිදුව ප්‍රදේශයේ (බාධා කිරීම්)

ගරු ජයරාජ් ප්‍රනාන්දුපුල්ලේ මහතා

යූ එන් පී මිනිමරුවන් එළෙව්වේ අපි. වෙස්මුහුණු බැඳගත් යූඑන්පී මිනීමරුවන් අපේ කොල්ලන්ට මැරුවා. හිටපු ඇමතිවරුන් ඒ අයගේ පුත්තු එකතු වී අපේ කොල්ලන්ට මැරුවා. අපේ කොල්ලන් මරපු උන් තමයි ඒ (බාධා කිරීම්) සිටියේ. අපි උන්ව එළෙව්වා. අපි උන්ට එන්න දෙන්නේ නැහැ. (බාධා කිරීම්) හොරකම් කළා කෝටි ගණන් පගා ගහලා ලැජ්ජද? (බාධා කිරීම්) ....."

The 1st Respondent did not deny or explain the statements attributed to him, by means of a counter affidavit; nor did his counsel seek to deny those statements or take any objection to their admissibility in evidence. Learned counsel's position was that such statements made in Parliament must not be treated as if they were precise responses to questions; that when the matter was raised, the 1st Responded gave a political response, rather than a factual response; that his observations were general and not intended to refer to the facts of this particular incident and that such statements made in the cut and thrust of debate often contain over statements and inaccuracies. Hence, counsel submitted that they cannot be treated in the same way as an averment in an affidavit filed in Court proceedings. He strenuously contended that the 1st Repondent's affidavit set out the correct position and that his statements in Parliament should not be used to test the accuracy or credibility of that affidavit.

I am not at all attracted by this contention. An averment in an affidavit, no less than oral evidence, can be tested by reference to a prior inconsistent statement. Just as a witness who gives oral evidence must have an opportunity to explain a prior statement whilst still in the witness box, a party who submits an affidavit has a similar opportunity of doing so by means of a counter affidavit. The 1st Respondent did not seek the permission of Court to file an explanatory counter affidavit, although the hearing was about three months after the Hansard extracts were produced.

It is also relevant to note that the statements made by the 1st Respondent in Parliament were within a week of 31st January.

The Hansard extracts establish the following facts. One Member referred to the 'Divaina' news item, and then made a specific reference to the Airport taxi drivers being chased away. He was interrupted at that stage. The 1st Respondent then made a long statement, and, later, further observations on the same subject, as to what happened and the reasons therefor. The following are significant:

"කටුනායක ගුවන් තොටුපළේ හිටියේ කවුද ? තොර බළල්ලු හිටියේ. මීනිමරුවෝ හිටියේ." ..... "ඔවුන් තමයි අපේ තොල්ලන්ව මැරුවේ. ඔවුන් තමයි අපේ තොල්ලන් උස්සා ගෙන ගියේ. ඒ පැක්සිකාරයන් තමයි" ..... "ඔය කටුනායක ගුවන් තොටුපළේ

වැක්සිකාරයෝ සමයි දරු මරුවෝ. මිනිමරුවෝ. ඒ අය සමයි අපේ කොල්ලන් ඉස්සුවේ. අපේ කොල්ලන් පිළිස්සුවේ. අපේ කොල්ලන්ට ලේබල් ගහලා ගහේ දැම්මේ කවුනායක ගුවන් තොටුපළේ ඒ රියදුරන්ය කියන එක මතක තබා ගන්න" ....." ගුවන් තොටුපළේ සිටි ඒ වැක්සිකාරයෝ මිනිමරුවෝ" ....." බය නෑ. මිනීමරුවන්ට එලෙව්වා. "..... "යූ එන් පී මිනිමරුවන් එලෙව්වේ අපි" ....." අපි උන්ට එලෙව්වා. අපි උන්ට එන්න දෙන්නේ නැහැ"

In the absence of any counter-affidavit from the 1st Respondent, his remarks in Parliament cannot be interpreted, discounted or otherwise questioned as being general statements about thuggery, or general political views about political opponents or wrong doers, or otherwise. The Court must take the Hansard as it is, as setting out certain facts, namely, that the 1st Respondent made a series of remarks, without attempting to draw any inferences from those facts or to come to any conclusion as to the truth or otherwise of what he said.

The 1st Respondent's affidavit is thus contradicted by the fact that he made statements in Parliament which are quite inconsistent with his affidavit. Those inconsistencies are so grave, that his affidavit cannot safely be acted upon. The consequence is that, as between the petitioners' and the 1st Respondent's versions, it is more probable that the 1st Respondent did (as alleged by the petitioners) instigate those present, by labelling the members of the petitioner-societies as UNP stooges and by uttering threats intended to drive them away from the Airport.

It is necessary to stress that I do not, in any way, regard the 1st Respondent's statements in Parliament as amounting to admissions or corroboration of the petitioners version, or as substantive evidence, but only as facts (i.e. inconsistent statements) relevant to the credibility of his affidavit.

The resulting position is that we have, on the one hand, the petitioners version, which is in no way internally inconsistent; and (as will appear later in this judgment) their version of the events of 31.1.95 and the subsequent months is intrinsically consistent. On the other hand, the 1st Respondent's affidavit is unreliable because it is seriously contradicted by his own previous statement, and that deficiency is so serious that it cannot be offset by the other affidavits, tendered by the

Respondents, which directly or indirectly corroborate his version. It is not a mere inconsistency but a fundamental contradiction. Corroboration is undoubtedly desirable and relevant, but where the principal evidence sought to be corroborated is so seriously contradicted, corroboration cannot, rehabilitate it.

I must, however, state that the infirmities in the 1st Respondent's affidavit do not help the petitioners to tilt the balance in so far as the 7th Respondent is concerned; for his affidavit is not undermined by other inconsistent statements. I therefore hold that the petitioners have failed to establish instigation, participation or other involvement by the 7th Respondent.

It is appropriate at this stage to consider the alleged exclusion of the members of the petitioner societies from the Airport. Their position is that some members of their societies also joined the 16th Respondent and that, apart from those persons, none of the other members were given hires after 9.30.a.m. on 31.1.95.

The duty rosters were not produced by any party; learned President's Counsel for the petitioners claimed that the petitioners had not been given copies, but learned State Counsel contended that there was no evidence of this. If the duty rosters had shown that the petitioners were in fact given hires as usual, there was no reason for the Manager (on 21.6.95) to refuse to discuss matters relating to the implementation of the subsisting agreements, as mentioned later in this judgment. What is more, the 14th Respondent should have produced those duty rosters at the very outset to contradict the averments in the petitions that only members of the 16th Respondent has been allowed hires after 9.30.a.m.on 31.1.95. Instead, the Manager answered those averments without producing or even referring to the relevant documents; without stating anything about the position on and after 2.2.95, he merely set out 12 numbers of members of AISCS whose drivers had obtained hires on 31.1.95, but with no indication whether those were before or after 9.30.a.m; and seven numbers of AISCSL members who had obtained hires on 1.2.95. Considering that the statistics furnished by the Manager showed an average of 3000 disembarking passengers per day, it seems probable that each of the drivers would have got at least one hire every day. If so there is every likelihood that the petition-

ers obtained the hires on 31.1.95 during the first nine or ten hours of that day.

According to their second affidavit dated 31.5.95, the petitioners had applied to the 14th Respondent to furnish them with a statement reflecting the allocation of duty turns to taxi operators and the monthly revenue reports of Airport taxi services for the period 1.2.95 to date but they have been unable to obtain this material. They claim that the duty rosters would establish that none of their members have been able to obtain even a single duty turn after 1.2.95. The 14th Respondent's failure to furnish the relevant information to Court lends credence to the petitioners' claim.

The petitioners have therefore established, on a balance of probabilities that, with seven exceptions on 1.2.95, they did not receive any hires after 9.30.a.m. on 31.1.95: and beyond reasonable doubt, that on and after 2.2.95 they received no hires. Was this because of threats of violence or was it quite voluntary? The petitioners have produced the particulars furnished by the 14th Respondent of their monthly income for the months of July and August, 1994, (P14 and P15) showing that most of them earned between Rs.30,000/- and Rs.40,000/- per month. One cannot imagine that all of them suddenly decided to forego this income voluntarily.

Further, the 14th Respondent and its Manager had been of the view in January that more taxis were required. On 31.1.95, 38 vehicles of the 16th Respondent were inspected. This made a total of 238 vehicles available. But, by 1.2.95 over one hundred of the original 200 vehicles ceased to operate, so that there remained only about 130. There is no suggestion that the 16th Respondent increased the number of taxis. Disembarking passengers would have been seriously inconvenienced thereby. Considering the speed with which the 14th Respondent acted on 11.1.95, in order to increase the number of taxis available, one would have expected equal concern when the number of taxis dropped on and after 2.2.95. Unless they were aware that this was due to reasons beyond the control of the taxi drivers concerned, the 14th and 15th Respondents and the Manger would have inquired from the petitioner-societies why they were not fulfulling their obligations under the agreements.

The conclusion is inescapable. They made no such inquiries because they knew that the petitioners were not keeping away voluntarily; and they could not have penalised the petitioner-societies in any way, considering the prevailing circumstances.

When these applications were called in Court on 2.6.95, counsel appearing for the 14th and 15th Respondents informed Court that the said Respondents have no objection and are always willing to permit the petitioners to operate their taxis at the Airport.

The petitioners state in their affidavit dated 11.7.95 that they made an appointment to meet the General Manager of the 14th Respondent at 9.30.a.m. on 21.6.95 to discuss the arrangements to operate their taxis but on the morning of that day, the General Manager informed them that he is unable to discuss any matter connected with the issues relating to these applications as the matter is pending before Court. He further stated that without an order from this Court, he was unable to grant any facilities that are required for the petitioners to operate their taxis at the Airport. The petitioners, therefore, sought an order from this Court directing the 14th Respondent to grant all facilities to enable them to operate their taxis at the Airport.

On 18.7.95 the Court made order permitting the petitioners to meet the 14th and 15th Respondents to discuss the necessary arrangements in regard to operating their taxis at the Airport and State Counsel appearing on behalf of the 14th and 15th Respondents had no objection to this arrangement and undertook to ensure that discussions are held.

Despite solemn undertakings and pious hopes, the situation as regards the petitioners has remained the same.

No instigation, connivance or participation has been alleged against the 14th and 15th Respondents and their officials. But the question is whether there was any other involvement of the kind described in *Faiz v. Attorney General and Others.*[1].

In order that the members of the petitioner-societies could exercise their rights and discharge their obligations, the 14th and 15th Respond-

ents had to take reasonable steps to enable them to enter and remain in the Airport premises, without unusual danger to their person and property. If these Respondents could not do so themselves, they had the right and the duty to ask the law enforcement authorities for necessary assistance.

Several complaints by and on behalf of the petitioners were made in respect of their exclusion from the Airport premises, but these did not receive any satisfactory response.

A complaint dated 31.1.95 (P2), received by the 14th Respondent the same day, referred to anticipated forcible exclusion from the Airport and requested protection. This was forwarded to the IGP, the 8th Respondent, on 3.2.95; the letter was already copied *inter alia* to the IGP, Senior S.P. and O.I.C. Katunayake Police. No further reply was sent.

A letter dated 3.2.95 (P9) ,was sent to the 15th Respondent by an Attorney-at-Law on behalf of the two petitioner-societies. This gave details of the exclusion and obstruction, and requested protection. A reply dated 3.3.95 (14R.A), was sent only after the petitioners had filed this application and obtained leave to proceed; it merely stated that the area in the Airport where taxis operate comes under the supervision of the police and that the police have been instructed to maintain law and order in the area.

Another letter dated 8.2.95 (P7), was sent by the Chairman of the respective petitioner-societies to the Manager, referring to acts of intimidation by members of the 16th Respondent, together with armed groups of thugs, thus preventing the members of the petitioner-societies from getting their duty turns. The letter refers to two vehicles used for this purpose, by their members and draws attention to the subsisting agreements which are valid till 31.12.96 under which their members are entitled to operate taxis at the Airport; and requests that necessary protection be provided to enable them to discharge their duties in a suitable atmosphere.

The Manager replied, again, only after leave to proceed had been granted, on 24.3.95 (14R 1), stating that the matters raised were so important that the societies should send a formal communication to the Chairman (15th Respondent) direct.

But at no stage did the 14th or 15th Respondents or the Manager inform the petitioners that police assistance would be forthcoming or that security had been increased and that the petitioners could safely return to work. The 14th and 15th Respondents failed to take any action even to enable the petitioners safely to enter and to remain in the Airport premises, or to get the law enforcement authorities to take necessary action. The manner in which they responded to the representations made to them shows that they were aware of what was happening, and acquiesced in it.

So far as the police were concerned, the letter of 31.1.95 (P2) had been copied to the IGP. Senior S.P. and O.I.C. Katunayake Police. The letter dated 8.2.95 (P7) had also been copied to the I.G.P. But, there were no replies.

There were over 45 individual complaints made during the period 3.2.95 and 10.2.95. Learned State Counsel asserted that action had been taken; the complaints had been investigated and since practically all the complainants were unable to identify the culprits, no further action was possible. It was pointed out that the complainants were entitled to some measure of protection to get back to work, to which learned State Counsel strenuously submitted that the police had done their duty and had increased the security from two officers to six at the Arrivals terminal of the Airport. The affidavits did not indicate whether these officers were armed or how effective these arrangements would be in relation to the complaints made and the protection requested. Even if they were effective, State Counsel conceded that no attempt had been made to inform the petitioners that arrangements had been made for their protection and that they could go back to work.

Section 92(3) of the Penal Code provides that there is no right of private defence where there is time to have recourse "to the protecton of the public authorities". The petitioners were justified in appealing to the police for protection against threats and violence directed against them in regard to their work. Considering the importance of security at the Airport, and the efficient provision of services for passengers, the police were under a duty to take reasonable steps to extend to the petitioners "the protection of the law" : perhaps not the same high

degree as the protection extended when the 1st to 6th Respondents came to the Airport on 31.1.95, but some reasonable protection. By failing to extend any protection at all, in circumstances in which they were under a duty to do so, the police denied the petitioners the equal protection of the law.

As was said by Fernando, J. in *Faiz v. Attorney -General* (*supra*),

"Article 126 speaks of an infringement by executive or administrative action; it does not impose a further requirement that such action must be by an Executive officer. It follows that the act of a private individual would render him liable, if in the circumstances that act is executive or administrative. The act of a private individual would be executive if such act is done with the authority of the Executive; such authority transforms an otherwise purely private act into executive or administrative action; such authority may be express, or implied from prior or concurrent acts manifesting approval, instigation, connivance, acquiescence, participation, and the like (including inaction in circumstances where there is duty to act: and from subsequent acts which manifest ratification or adoption ..... in my view responsibility under Article 126 would extend to all situations in which the nexus between the individual and Executive makes it equitable to attribute such responsibility. The Executive, and the Executive officers from whom such authority flows would all be responsible for the infringement. Conversely, when an infringement by an Executive officer, by executive or administrative action, is directly and effectively the consequence of the act of a private individual (whether by reason of instigation, connivance, participation or otherwise) such individual is also responsible for the executive or administrative action and the infringement caused thereby. In any event, this Court would have power under Article 126 (4) to make orders and directions against such an individual in order to afford relief to the victim."

These principles were adopted in *Upaliratne v. Tikiri Banda and Others,*[2] too. Applying the said principles to the facts and circumstances of this case, I am of the view that on 31.1.95 the 1st Respondent rendered himself liable, in having instigated those who chased away the petitioners with threats of violence; thereafter the police were guilty of inaction, in circumstances in which they were under a duty to provide reasonable protection to the petitioners; and the 14th and 15th Re-

spondents, despite knowledge of what was taking place over a long period of time, acquiesced in the treatment meted out to the petititoners. They are all thus responsible for the violation of the petitioners fundamental rights under Article 12 (1), 12 (2) and 14 (1) (g), read with Article 14 (1) (c) of the Constitution, which violations yet continue.

I accordingly grant the petitioners the following reliefs:-

(i) A declaration that the fundamental rights of the individual petitioners under Articles 12 (1), 12 (2) and 14 (1) (g), read with 14 (1) (c), and the fundamental rights of the petitioner societies under Article 12 (1), have been infringed by the police and the 1st and 14th Respondents.

(ii) The State is directed to pay each individual petitioner a sum of Rs.10,000/- as compensation, as each such petitioner has been prevented during a period of over nine months from engaging in his chosen occupation; this will be without prejudice to the rights of the individual petitioners and/or the petitioner societies to recover damages, if so advised, for breach of contract or otherwise from the State and/or the 14th Respondent.

(iii) The 14th Respondent is directed to pay each petitioner-society a sum of Rs.50,000/- as compensation, as culpable inaction on the part of the 14th Respondent prevented the two petitioner-societies from exercing their rights under the agreements.

(iv) Since the violation resulted from the 1st respondent's instigation, he is directed to pay a sum of Rs.50,000/- as costs: Rs.25,000/ to the petitioner-society in Application No. 66/95, and Rs. 25,000/- to the petitioner-society in Application No.67/95.

(v) The Inspector General of Police, the Deputy Inspector General of Police, Negombo Division, the Senior Superintendent of Police, Range 1, Negombo, and the Officer-in-Charge of the Katunayake Police Station, are directed to take immediate steps to provide necessary security and to ensure that the members of the two petitioner-societies are able to operate their taxis at the Airport, by themselves or through their duly authorized drivers, according to the duty roster of the 14th Respondent.

(vi) The 14th and 15th Respondents are directed to immediately provide all necessary facilities and ensure adequate security to the members of the two petitioner-societies and/or their duly authorized drivers to operate their taxis at the Airport in terms of the duty roster hitherto in existence, under the respective agreements in force between the 14th Respondent and the petitioner-societies.

The Inspector-General of Police is directed to furnish a report to this Court on or before 15.12.95 indicating the steps taken by the police to ensure that the members of the petitioner-societies are able to operate their taxis without any obstruction, in terms of the agreements with the 14th Respondent.

The 14th and 15th Respondents are directed to furnish a report containing particulars of duty turns given to the members of the petitioner-societies, together with particulars of duty turns given to the other taxi operators, for the month of December, 1995. This report should be submitted to this Court on or before 8.1.96.

The 2nd, 3rd, 4th, 5th and 6th Respondents in each application, in respect of whom learned President's Counsel for the petitioners conceded at the stage of hearing that there was no evidence, will be entitled, jointly, to a sum of Rs.20,000/- as costs, payable equally by the petitioner-society in Application No.66/95 (Rs.10,000) and the petitioner-society in Application No.67/95 (Rs.10,000)

My brother Perera disagrees as to the liability of the 1st Respondent. As my brother Fernando has dealt comprehensively with the question of Parliamentary privilege raised by him, I have not adverted to that matter, because I entirely agree with Fernando, J.

Relief granted against 1st and 14th Respondents.

Claim against 2nd to 7th Respondents rejected.