WEERARATNE
V.
HON. PERCY COLIN-THOME AND THREE OTHERS

SUPREME COURT
ATUKORALE, A. C. J.,
JAMEEL, J., AND
FERNANDO, J.
S. C. REFERENCE NO. 1/88.
C.A. APPLICATION NO. 278/88
JULY 18, 19 and 20, 1988

Writ of Certiorari — Special Presidential Commission of Inquiry — Special Presidential Commissions of Inquiry Law No. 7 of 1978 as amended by Act No. 4 of 1978 — Jurisdiction — Ouster clauses — Ejusdem generis rule — Public body.

His Excellency the President by warrant dated 20.3.86 constituted a Special Presidential Commission comprising three judges of the Supreme Court (1st, 2nd and 3rd respondents) to inquire into and obtain information in respect of the period between 23.7.1977 and 31.12.85 relating to the administration of any public body and conduct of any public officer and report whether there has been any misuse or abuse of power, corruption or any fraudulent act in relation to such public body or any irregularity in the administration of such public body by or on the part of any such public officer or other person and the extent to which such person is so responsible and to recommend whether any person should be made subject to civic disability and make recommendations with reference to any other matters inquired into.

The Commission served a notice on the petitioner (Anura Weeraratne) with particulars of 24 allegations made against him and having considered his explanations in reply, informed him in January 1987 that 23 allegations will be inquired into. The inquiry began on 26.3.1987 and was concluded in November 1987 and the petitioner was found guilty of 9 allegations by its Report dated 27.11.1987 (Sessional Paper No. V of 1988).

The said 9 allegations fall into 3 categories:

(1) As Secretary Ministry of Fisheries during 1.1.1979 to 8.11.84 he

(i) recommended or acquiesced in or caused amendments to be made to memorandum and articles of Ceylon Development Foundation (Ceynor) knowing or having reason to believe they would be detrimental to the interests of the State in Ceynor and with a view to divesting State Control over Ceynor and improper use of the property of Ceynor.

(ii) directed Secretaries to Ceynor to submit draft amendments to the Board *to enable the members of the Board to hold their places in the Board in*

their private capacity knowing or having reasonable cause to believe that such an amendment would be detrimental to the interests of the State in Ceynor.

(2) Being Chairman, Fisheries Corporation during 12.10.80 to 29.9.83 the petitioner

(i) unlawfully authorised or caused the transfer of certain parts of a Sherpa van from a Corporation Workshop for installation in a Sherpa van owned by the Ceylon Rubber Products Ltd. of which he and the members of the family held controlling interests.

(ii) received an illegal gratification of 100,000 Japanese Yen from Akasaka Diesel Ltd. for the installation of a diesel engine in a vessel built for the Corporation by Uchida Ship Building Co. Ltd.,

(3) Being the Chairman of Ceynor during the period 1.1.79 to 26.12.84 by virtue of the office he held as Secretary, Ministry of Fisheries the petitioner

(i) misappropriated a generator belonging to Ceynor.

(ii) retained the said generator in the premises of the Ceylon Rubber Products Ltd., knowing or having reasonable cause to believe that the said generator was misappropriated.

(iii) deceived Ceynor by misrepresentation that the generator offered for sale by Agtrinss Limited was property belonging to Agtrinss Limited, and thereby induced Ceynor to deliver Rs. 375,000 to the purported vendor.

(iv) committed breach of trust in respect of funds belonging to Ceynor by converting to his own use the said sum of Rs. 375,000 out of the funds intended for the use of Ceynor.

Ceynor was a combine between Sri Lankan and Norwegian interests (private and state) and became a corporate body by virtue of registration under the Companies Ordinance as a company limited by guarantee. Among the objects of Ceynor were promotion of the welfare of the Youth in Ceylon as well as the promotion of fisheries. In 1977 Ceynor acquired an increase in government support. On 22.8.87 a Letter of Intent was signed by 3 Ministers on behalf of the Government of Sri Lanka and a Norwegian Youth Organisation (NGU) and on 12.3.1979 the Government of Sri Lanka and Norway signed an agreement. By these steps an aid programme, organisational restructuring of Ceynor and a programme of commodity assistance was scheduled. The Government provided material assistance and several facilities to Ceynor. Though Ceynor was not a party to the Letter of Intent or agreement it was the duty of petitioner to make the monies provided by the Government

(approximately Rs. 14 million) available to Ceynor. Ceynor received these sums as well as other assistance with full knowledge of the purposes set out in the documents. All these funds were held by Ceynor subject to a fiduciary obligation to apply them for those purposes. The Ceynor Board considered itself bound by the terms of the documents including the Letter of Intent and Agreement. In 1981 there was a drastic change in the attitude of the petitioner and some members and Directors to the continuation of Government nominee Directors and a drastic change in the membership and directorate was approved at a meeting of the members of Ceynor held on 26.8.81. The Registrar of Companies rejected the amendments but from August 1981 to September 1982 Ceynor functioned under the purported amendments. The petitioner ignored protests and requests to comply with the Letter of Intent and agreement and the government's right to nominate half the Board The Norwegians also protested.

By the end of 1982 (5. 11. 82) after considerable direct and indirect financial support had been received by Ceynor from the Government its articles were amended to exclude government nomination of Directors. The Presidential Commission made no finding on the validity of this action but held against the petitioner on the question of its propriety which was the subject of the first set of charges. Ceynor's fiduciary obligations survived even the amendments of 5.11.1982. Its activities were intimately connected with Governmental activities in the field of fisheries and the implementation of the government's national Development Programme. Any profits by these activities of Ceynor were merely incidental and were not distributable to its members. Ceynor was a charitable non-profit making organisation funded extensively by the State and State sources by way of grant, loan, subsidies, duty concessions and movable and immovable property.

The Commission found the petitioner guilty of the nine charges summarized under the three categories summarized above and recommended the imposition of civic disability.

Held:

(1) There is evidence, oral and documentary in support of the findings of fact and the jurisdiction of the Supreme Court does not extend to the review of these findings of fact.

Where there is conflict of evidence, the Court need only ascertain whether there was evidence before the tribunal which would justify a reasonable tribunal reaching the conclusion it did. The Court will not interfere with findings of fact except upon "very strong grounds". There will be no trial of disputed facts *de novo*.

(2) The effect of section 18A(2) is to enlarge the ouster contained in section 9(2) of Law No. 7 of 1978 (as amended by Act No. 4 of 1978) in respect of all

courts other than the Supreme Court but to preserve unaffected the right of judicial review by the Supreme Court (on the grounds set out in the first proviso to the Interpretation Ordinance as amegded by Act No. 18 of 1972) upon a final determination. Review by the Supreme Court is permissible on the question of jurisdiction but only to the extent set out in the first proviso to section 22 of the Interpretation Ordinance as amended by Act No. 18 of 1972, namely where the order, decision, determination, direction or finding is ex facie not within the power conferred on the person or tribunal making it; breach of the rules of justice and non-compliance with mandatory provisions of law where such compliance is a condition precedent to the making of such order.

(3) Ceynor was a public body and the Commission did have jurisdiction to inquire into the charges involving the petitioner's conduct in relation to Ceynor.

(4) On a true construction of its powers, the Commission did have the right to inquire into the conduct of the petitioner in relation to Ceynor. Whatever error there might have been in the process of reasoning the Commission did not reach a wrong conclusion.

Cases referred to

1. *Dilworth v. Commissioner of Stamps (1899) AC 99, 105*
2. *Jennings v. Stephens (1936) 1 All ER 409, 412*
3. *Griffiths v. Smith (1941) 1 All ER 66, 89*
4. *Trade Exchange (Ceylon) Ltd. v. Asian Hotels Corporation Ltd.. (1981) 1 Sri LR 67*
5. *R v. Criminal Injuries Compensation Board, Ex p. Lain (1967) 2 All ER 770*
6. *Owners of S. S. Magnhild v. Mc Intyre Brothers (1921) 2 KB 97*
7. *Thames & Mersey Marine Insurance Co. v. Hamilton Frazer & Co. (1887) 12 AC 484*
8. *Bradford Corporation v. Myers (1916) 1 AC 116*
9. *Anisminic Ltd. v. Foreign Compensation Commission (1969) 2 AC 147; (1969) 1 All ER 208*
10. *R. v. Glamorganshire Inhabitants; (1700) 1 Ld. Raym. 580.*
11. *Pearlman v. Governors of Harrow School (1979) 1 QB 56*
12. *Re Racal Communications Ltd. (1981) AC 574, (1980) 3 WLR 181*
13. *S.E. Asia Fire Bricks v. Non. Metallic Products etc Union (1981) AC 363*
14. *O'Reilly v. Mackman (1983) 2 AC 237*
15. *R. v. Greater Manchester Coroner ex p. Tal (1984) 3 All ER 240*

APPLICATION for writ of certiorari (transferred from the Court of Appeal) to quash findings of Special Presidential Commission.

R. K. W. Goonesekera with *R. E. Thambiratnam* and *R. Rudranathan* for the petitioner.

Sunil de Silva, Additional Solicitor-General with *Anura Meddegoda* State Counsel as *amicus curiae.*

Cur. adv. vult.

August 24, 1988
FERNANDO, J.

This application for an order in the nature of a writ of certiorari to quash the findings and the recommendation of the Special Presidential Commission of Inquiry, consisting of the 1st, 2nd and 3rd Respondents, was made to the Court of Appeal, and stood transferred to this Court in terms of section 18A(1) of the Special Presidential Commissions of Inquiry Law, No. 7 of 1978, as amended by Act No. 4 of 1978.

His Excellency the President by Warrant dated 20.3.86 established that Commission, consisting of three Judges of this Court —

to inquire into and obtain information, in respect of the period commencing on 23.7.77 and ending on 31.12.85, relating to —

(1) the administration of any public body as defined in Law No. 7 of 1978, and

(2) the conduct of any public officer as defined in Law No. 7 of 1978, as amended by Act No. 4 of 1978, in relation to such public body, and

to report on whether there has been —

(a) any misuse or abuse of power, corruption or any fraudulent act in relation to such public body, or

(b) any irregularity in the administration of such public body,

by or on the part of any such public officer or other person and the extent to which such person is so responsible, and to make recommendation as to whether any person should, in terms of section 9 of Law No. 7 of 1978, in accordance with the report referred to therein be made subject to civic disability, and to make such other recommendations with reference to any other matters that have been inquired into under the terms of the Warrant.

Having previously served a notice on the Petitioner, with particulars of 24 allegations made against him, and having considered his explanations, the Commission informed him in January 1987 of its decision to inquire into 23 of those allegations. That inquiry commenced on 26.3.87, and was concluded in November 1987.

The Petitioner held three different offices during various periods covered by the Warrant. The nine allegations of which the Commission found him guilty in its Report dated 27.11.87 (Sessional Paper No. V of 1988) fall into three categories, which may be summarised as follows —

(1) Being the Secretary, Ministry of Fisheries, during the period 1.1.79 to 8.11.84 the Petitioner did —

(i) recommend and/or acquiesce in, or cause amendments to, the Memorandum and Articles of Association of Ceynor Development Foundation ("Ceynor")—

knowing or having reason to believe that the said amendments would be detrimental to the interests of the State in Ceynor;

with a view to divesting State control over Ceynor and thereby facilitate improper use of the property of Ceynor;

(ii) direct the Secretaries to Ceynor to submit to the Board of Directors a draft amendment to the Memorandum and Articles without provision for the representation of *ex officio* members and Government nominees, and thereby enable the members of the Board to hold their places on the Board in their private capacity, notwithstanding that he knew or had reasonable cause to believe that such an amendment would be detrimental to the interests of the State in Ceynor.

(2) Being the Chairman, Fisheries Corporation, during the period 12.10.80 to 29.9.83 the Petitioner did —

(i) unlawfully authorise or cause the transfer of certain parts of a Sherpa van from a Corporation workshop for installation in a Sherpa van owned by Ceylon Rubber Products Ltd, of which he and the members of his family held controlling interests;

(ii) receive an illegal gratification of 100,000 Japanese Yen from Akasaka Diesel Ltd. for the installation of a diesel engine in a vessel built for the Corporation by Uchida Shipbuilding Co. Ltd.

(3) Being the Chairman of Ceynor during the period 1.1.79 to 26.12.84, by virtue of the office he held as Secretary, Ministry of Fisheries, the Petitioner did —

(i) misappropriate a generator belonging to Ceynor;

(ii) retain the said generator in the premises of Ceylon Rubber Products Ltd, knowing or having reasonable cause to believe that the said generator was misappropriated;

(iii) deceive Ceynor by misrepresentation that the generator offered for sale by Agtrinss Limited was property belonging to Agtrinss Limited, and thereby induced Ceynor to deliver Rs. 375,000 to the purported vendor;

(iv) commit breach of trust in respect of funds belonging to Ceynor, by converting to his own use the said sum of Rs. 375,000 out of the funds intended for the use of Ceynor.

The Petitioner was appointed Secretary, Ministry of Fisheries, on 1.1.79, and functioned in that office until 3.1.85. On 8.1.79, he became a Director of the Ceynor Development Foundation Ltd. ("Ceynor"), a company limited by guarantee, and immediately commenced to function as its Chairman, presumably by virtue of appointment under its Articles; that office he held until the end of 1984.

Ceynor has a fascinating history of collaboration between Norwegian Non-Government Organisations and, later, the

Government of Norway (through its Aid Agency N.O.R.A.D), on the one hand, and the Sri Lanka Government and the Sri Lanka Freedom From Hunger Campaign, on the other. In 1967 a development project was started at Karainagar, consisting of a boat-yard, workshop, ice-plant, and cold storage and freezing plant. This project was funded by a Norwegian Youth Organisation named Norges Godtemplar Ungdoforbund ("N.G.U."), and its local sponsor was the Ceylon National Freedom From Hunger Campaign Committee ("F.F.H.C.", a Committee appointed by the Minister of Land, Irrigation and Power; see section 20 of the Sri Lanka National Freedom From Hunger Campaign Law, No. 15 of 1973). Ceynor's true status prior to 1971 is not clear, but in that year it became a corporate body, by virtue of registration under the Companies Ordinance (Cap. 145) as a company limited by guarantee.

That occurred in these circumstances. On 21.10.70 the N.G.U. informed the then Minister of Fisheries that it was intended to have a Board of five Directors, of which one would be a nominee of the Minister in charge of the F.F.H.C., and further stated that "since the activity of this enterprise is **primarily** in support of the objectives of your Ministry, I would welcome a nominee from your Ministry". The Ministry responded by nominating Mr. Vincent Panditha, its Senior Assistant Secretary, and he was one of the original subscribers to the Memorandum, being described therein as "Ministry of Fisheries, Public Servant". According to Regulation 7 of the Articles, of the five Directors, three were to be nominated by N.G.U., and one each by the Minister of Fisheries and F.F.H.C.

The F.F.H.C. Committee appointed by the Minister was succeeded in 1973 by a body corporate established by Law No. 15 of 1973, under the name Sri Lanka National Freedom From Hunger Campaign Board ("F.F.H.C."); having the following objects—

(i) to secure the aid of foreign and local non-governmental agencies, for social and economic development in accordance with the Government development programme;

(ii) to assist bodies in carrying out schemes of public utility, social welfare and economic development;

(iii) to aid, promote and co-ordinate specific agricultural and industrial development projects;

(iv) to stimulate non-governmental agencies in the implementation of projects for increasing agricultural and industrial production; and

(v) to collaborate with the International Freedom From Hunger Campaign and other similar bodies abroad.

The Board consisted of eleven members, all nominated by Ministers, some of whom had to be public officers within the Ministries concerned. The Minister of Agriculture had the right to give general or special directions; an initial government grant was provided for; the provisions of part II of the Finance Act, No. 38 of 1971 — (dealing with "Financial Control of Public Corporations") — were made applicable. F.F.H.C. was in 1973 clearly a "public corporation" within the meaning of section 22 of the Finance Act, No. 38 of 1971, being—

> "a corporation, board or other body which was or is established by or under any written law, other than the Companies Ordinance, with capital wholly or partly provided by the Government by way of grant, loan or other form."

Thus the birth of Ceynor as a corporate body was not a purely private affair, but a matter of some concern to the State; which, as will be seen, took an increasing interest in its subsequent growth, development and nourishment.

I now turn to the principal objects of Ceynor, as expressed in its Memorandum of Association —

"(a) to carry on, collaborate with, and promote in Ceylon, the ideals and objects of the International Freedom From Hunger Campaign;

(b) to promote education and the welfare of the Youth in Ceylon;

(c) to engage in and to promote fisheries and the production of food for the people of Ceylon and other countries;

(d) to promote, encourage, assist, in the acquisition and diffusion of knowledge of fisheries, agriculture, marketing, and irrigation water resources, the production, conservation and storage of feed;"

(There follow a number of other objects related to fisheries, fishing vessels and equipment, processing of fish, and allied matters.)

The income and property of Ceynor were required to be applied solely to the advancement and promotion of the objects of the company, and no portion thereof was payable to the members, whether by way of dividend, bonus or otherwise by way of profit. Upon a winding up, the residue was not distributable to the members, but were required to be transferred to another body having similar objects, to be selected by N.G.U. and N.O.R.A.D. As the Petitioner himself stated to the Commission, and as held by the Commission, Ceynor was meant to be "a charitable non-profit making organisation".

The members of Ceynor made no investment of capital, in the form of shares; their liability in respect of the company extended to a maximum of Rs. 10 each; the membership of Ceynor being limited to 20 persons, to any one dealing with Ceynor the value of those guarantees would not exceed Rs. 200.

From 1973 up to 5.11.82 (when the Articles were amended to exclude such right of nomination), the Government was (directly or indirectly) entitiled to, and did, nominate two of the five Directors; further, N.G.U. nominated two public officers as directors. The relationship between Ceynor and the Government as expressed in N.G.U.'s letter dated 21.10.70 was confirmed by the Petitioner as well as other Directors of Ceynor: that the Government nominee Directors were expected to watch the interests of the Government/Ministry; that the Board was informed of the policies of the Ministry and had to implement those policies; in the Petitioner's own words, in a letter written

after the Articles were amended. "Ceynor is involved in a large measure in activities connected with the Ministry of Fisheries . . . . . " Considerable significance must necessarily be attached to the presence of the Minister of Fisheries at several Board meetings of Ceynor.

In 1977 Ceynor required a greater degree of Government support in order to carry out its activities successfully. A Letter of Intent was signed on 22.8.77 by three Ministers on behalf of the Government, and by N.G.U.; this outlined the aid programme for 1978-1983, the area of operation, and the proposed organisational structure of Ceynor; the declared intent of the parties was "**to assist the Sri Lanka Government in its National Development Programme**"; it was also stated that "Ceynor will take charge of the implementation in cooperation with the Government". Reciprocal obligations were contemplated: on the part of the Government, to provide the local costs of land, buildings, working capital, and exemption from duty and FEEC's. There were to be six Directors, three to be appointed by the Government, and three by N.G.U.; they were to be assisted by local management committees, consisting of the General Manager, representatives from the workers, and the **District Ministers** to be appointed by the Government. Detailed budgets were to be worked out.

By the end of 1980, N.G.U. had contributed a total of Rs. 34.62 million, and was expecting a Government contribution of Rs. 20.75 million, of which only Rs. 900,000 had been released. Cabinet authority was obtained for a grant of Rs. 10.5 million. Ultimately, between December 1980 and July 1981, a total of Rs. 13.5 million was received by Ceynor: of this, Rs. 7 million was out of savings from the Ministry of Fisheries vote. At this stage, a nominee of the Ministry of Finance was appointed as one of the Government nominee Directors.

In the meantime, the Governments of Sri Lanka and Norway entered into an Agreement on 12.3.79 regarding Norwegian aid for 1981-1985; part of the aid for 1981 consisted of "commodity assistance" in a sum of 21 million kroners; it was agreed that out of this sum, 13 million kroners should be

allocated directly to Ceynor. It is not clear from the Report whether the entirety of this sum was made available to Ceynor, but it is certain that Ceynor received 6 million kronets (Rs 18 million).

Government intervention also resulted in other financial benefits to Ceynor. Ceynor was, in 1980-81, indebted to the People's Bank in a sum of over Rs. 40 million on account of working capital, as well as interest thereon; at a meeting chaired by the Minister of Finance, and attended by the Minister of Fisheries, agreement was reached whereby part of the principal sum was to be repaid, the balance to be re-scheduled, and the interest (about Rs. 9 million) to be written off if the loan was eventually repaid.

Thus while the members liability in respect of Ceynor amounted to Rs. 200, N. G. U.'s contribution was Rs. 34.62 million and the Government, directly or indirectly, contributed about Rs. 32 million, and also assisted in saving Rs. 9 million (interest written off). The Government also provided other material assistance: State land had been used for the Karainagar project and this was regularised by means of a formal lease, although it is not clear whether any lease rent was paid; several vans, and two insulated trucks for the transport of fish under refrigeration, gifted by the Japanese Government, were allocated to Ceynor in September 1979 and December 1980, respectively; certain assets of the Fisheries Corporation — a fish stall, a boat-yard and a fish meal plant — were handed over to Ceynor in 1978, 1979 and 1980, to enable them to be run more efficiently, consideration in some form being provided for.

The Commission refers in its Report to the evidence of Treasury officials that funds were made available to Ceynor for specific purposes, that they could not have been used for other purposes, and that the Petitioner, as Secretary of the Ministry, was the Chief Accounting Officer, and had to conform to Government financial procedures.

It was the evidence of the Director of Finance, General Treasury, that it was the duty of the Petitioner to make the monies

provided by Government available to the organisation concerned on the basis of an agreement. Clearly, the Petitioner was subject to this responsibility at least in respect of the sum of approximately Rs. 14 million made available by the Treasury and from Ministry savings. Although Ceynor was not, as such, a party to the 1977 Letter of Intent or the 1979 Agreement, there is no doubt that the Petitioner, and indeed the entire Board of Ceynor, received this sum, as well as the other assistance, with full knowledge of the purposes set out in those documents, and subject to the terms thereof. The protests made by the Norwegians in August and September 1982, which I refer to later, make this very clear. All these funds were therefore held by Ceynor subject to a fiduciary obligation to apply them for those purposes. It is clear that the Board considered itself bound by the terms of those documents: thus on 8.1.79, at a Board meeting attended by the Minister, the Board agreed to work on the re-constitution of the Board in the manner desired by the Minister, providing for equal representation — four each — of Government and N.G.U. nominees; on 30.1.79, the Board agreed on nine Directors, of which four would be Government nominees, and further decided that the Memorandum and Articles of Association would not be changed without the approval of *inter alia*, N.G.U., N.O.R.A.D. and the Ministry.

From 1981, however, there appears to have been a drastic change in the attitude of the Petitioner, and some members and Directors, to the continuation of Government nominee Directors. On 26.8.81, at a meeting of the members of Ceynor — although the resolutions adopted thereat are, strangely, in the form of Board resolutions: a drastic change in the membership and directorate was approved; the membership to consist of two local and two foreign non-government organisations and the Government, and the Board to consist of ten Directors, each member nominating two Directors. These amendments were rejected by the Registrar of Companies, probably on account of non-compliance with statutory requirements as to form and procedure. From August 1981 to September 1982, Ceynor functioned under the purported amendment, which the Registrar did not accept.

On 9.8.82 there was a Board meeting at which the resulting position was considered; one of the Government nominees did not receive notice of this meeting; the other, the Ministry of Finance nominee, strongly protested in writing to the Petitioner regarding the inaccuracy of the minutes of that meeting, which recorded that the Board "felt that it was advisable to delete the appointment of Government officials as Directors". (In view of the rejection of the amendment to the Articles, there were only five lawfully appointed Directors; since one lawfully appointed Director was absent, there could only have been four Directors actually present at that meeting; however, five persons have participated at that meeting as Directors.)

The Finance Ministry nominee not having received any reply from the Petitioner, the Deputy Secretary to the Treasury wrote to the Petitioner, reminding him of the terms of the Letter of Intent and, specifically, the Government's right to nominate half the Board, and requested an assurance of compliance with this condition in the proposed amendments. Again, the Petitioner did not reply.

The Norwegians, none of whom had been present on 9.8.82, also protested, stressing that "to delete the appointment of Government officials would be contrary to the Letter of Intent". There is thus no doubt that all concerned accepted the Letter of Intent as binding, even on Ceynor.

There was another abortive attempt to amend the Articles at an Extraordinary General Meeting held on 14.9.82, at which no Norwegians were present. A resolution to amend the Articles was unanimously passed provided prior approval was obtained from N.O.R.A.D. and N.G.U.; this was not forthcoming, the Norwegians again stressing the terms of the Letter of Intent.

However, within a few weeks there was a change in the views of the Norwegians — a change which the Commission found to be "inexplicable". Within four days another Extraordinary General Meeting was held, on 5.11.82, at which only 8 members were present (three by proxy); three of the members personally present were employees of Ceynor, who had been admitted as members

by the Board on 9.8.82, at a time when the Board was not duly constituted in terms of the original Articles; the Finance Ministry nominee in his protest had also expressed the view that these admissions to membership should be annulled. Due notice of this meeting had obviously not been given, because "all members present agreed to hold this meeting with shorter notice than specified in the Companies Act" — although it is the consent of members not present which is more important under the Companies Act. At that meeting, a special resolution to amend the Articles was unanimously passed, the effect of which was to remove the right of the Government to nominate Directors. Five minutes later — it is not clear what notice was given to members — an Annual General Meeting was held, and the Petitioner was elected a Director; he thus held office thereafter — both as Director and Chairman — by right of election by the members, and not by virtue of nomination by the Government. The Report records, however, that even after these amendments the Petitioner considered that "he continued to work at Ceynor on the basis that he was the nominee of the Minister and carried out his policy; in the matter of appointments and dismissal, before and after the amendment; the Minister gave directions and he followed them".

The Petitioner's position that these amendments were effected with the knowledge, and indeed upon the suggestion, of the Minister, as well as his claim that Finance Ministry approval was orally obtained, has been carefully considered by the Commission, and unequivocally rejected.

Thus by the end of 1982, after considerable direct and indirect financial support had been received by Ceynor from the Government, its Articles were amended to exclude Government nomination of Directors. The Commission has not come to any finding in regard to the validity of that amendment, and I therefore proceed on the assumption that the amendment was valid and operative. However, the propriety of that amendment is the subject of the first set of charges.

The findings of fact reached by the Commission may be analysed as follows:

(1) (a) Ceynor was from 1977 (and probably earlier) engaged principally in the exercise, performance and discharge of powers, duties and functions intimately connected with Governmental activities in the field of fisheries and the implementation of the Government's National Development Programme;

(b) While profits may have accrued to Ceynor from its activities, this was merely incidental to its objectives;

(c) Ceynor was intended to be a charitable non-profit making organisation, and under no circumstances were any of the profits or assets of Ceynor distributable to its members.

(2) Ceynor was funded extensively by the State, and State sources, by way of grant, loan, subsidies, duty concessions, and movable and immovable property.

(3) (a) Up to 5.11.82, the Government had the right to, and did, nominate two Directors, out of a total of five; in fact, a majority of Directors were public officers. The function of such Directors was to watch the interests of the Government and implement Government policy; and this was also the Petitioner's perception of his duty;

(b) Ceynor was subject to a fiduciary obligation to use the resources provided or obtained for Ceynor by the Government, for the purposes stipulated by or under the 1977 Letter of Intent and the 1979 Agreement; this obligation survived the amendments of 5.11.82.

The Commission found the Petitioner guilty of the nine charges summarized earlier, and recommended the imposition of civic disability under section 9(1) of Law No. 7 of 1978. There is evidence, oral and documentary, in support of the findings of fact, and it is clear that the jurisdiction of this Court in these proceedings, in any event, does not extend to the review of these findings of fact. The relevant principles and decisions applicable to such review have been referred to by Wade: Administrative Law 5th ed. p. 261; in a case of conflict of evidence, the court need only ascertain that there was evidence before the tribunal

which would justify a reasonable tribunal reaching the same conclusion; the court will not interfere with findings of fact except upon "very stong grounds"; there is to be no trial of disputed facts *de novo*, so that the court will not interfere when a question of jurisdiction arises, turning on a question of fact, about which there is a conflict of evidence.

The learned Additional Solicitor-General submitted, by way of a preliminary objection, that the ouster clauses in the Special Presidential Commissions of Inquiry Law, as amended, precluded this Court from reviewing the findings and recommendations of the Commission. Learned Counsel for the Petitioner contended that the ouster clauses had no application as the Commission had acted without jurisdiction, or had committed errors of law going to jurisdiction, and relied on several decisions regarding the interpretation of ouster clauses (2); the essence of his contention was that practically all the charges of which the Petitioner had been found guilty concerned his conduct in relation to Ceynor, and that the Commission had erred in law, such error going to its jurisdiction, in holding that Ceynor was a "public body" as defined in section 22 of the Law No. 7 of 1978. The question whether the ground of challenge was outside the scope of the ouster clause necessitated a consideration of that question of jurisdiction, and accordingly we heard arguments on all the questions involved.

THE OUSTER CLAUSE

Sections 9(2) and 18A of Law No. 7 of 1978, as amended by Act No. 4 of 1978, need to be examined. Section 18A(1) does not affect the power of judicial review, but merely identifies the Court having jurisdiction to review: although Article 140 confers the writ jurisdiction on the Court of Appeal, in the exercise of the power conferred by the proviso thereto (introduced by the First Amendment), section 18A was enacted effecting an automatic transfer to this Court of all applications for judicial review in respect of Commissions of Inquiry established under Law No. 7 of 1978:

Section 18A(2) has to be read together with section 9(2), which provides that any report, finding, order, determination, ruling or recommendation made by a Commission under Law No. 7 of 1978 shall be "final and conclusive and shall not be called in question in any court or tribunal by way of writ or otherwise"; these expressions have to be interpreted by reference to the rules prescribed in section 22 of the Interpretation Ordinance, as amended by Act No. 18 of 1972, and it is only if those rules are found inapplicable or uncertain that recourse may be had to their "plain" meaning — if indeed there be one — or judicial decisions, local or foreign. "Final and conclusive" had consistently been interpreted as excluding appeal, and as leaving unaffected judicial review on the ground of *ultra vires* and error on the face of the record; section 22, by its silence, must be regarded as impliedly affirming and adopting that judicial interpretation. However, the scope and effect of "shall not be called in question" clauses had been the subject of considerable controversy, and section 22 manifests an intention to resolve such controversy, by defining the ambit of such clauses. The first proviso makes it clear that such clauses, whether or not accompanied by the words "whether by way of writ or otherwise", do not exclude judicial review under Article 140 —

(a) where the order, decision, determination, direction or finding is *ex facie* not within the power conferred on the person or tribunal making it;

(b) where such person or tribunal is bound to conform to the rules of natural justice, but fails to do so; and

(c) where such person or tribunal is obliged to comply with a mandatory provision of law as a condition precedent to the making of such order (etc), but fails to do so.

Thus the "ouster" effected by section 9(2) does not exclude the power of judicial review of this Court on those grounds. Section 18A(2) enlarges the scope of section 9(2) in two respects. Firstly, paragraph (a) precludes any court — and this would include the Supreme Court — "from staying, suspending or prohibiting the

holding of any proceeding before or by any Commission . . . . or the making of any order, finding, report, determination, ruling or recommendation by any such commission", i.e. from making interim orders. Secondly, paragraph (b) precludes any court from "setting aside or varying any order, finding, report, determination, ruling or recommendation of any such Commission", but preserves (by the first proviso to that paragraph), in no uncertain terms, the jurisdiction of this Court to make a final order in the lawful exercise of its jurisdiction. Thus the effect of section 18A(2) is to enlarge the ouster contained in section 9(2) in respect of all courts, other than the Supreme Court: to preclude the making of interim orders even by the Supreme Court; but to preserve unaffected the right of judicial review by the Supreme Court (on the grounds set out in the first proviso to section 22 of the Interpretation Ordinance) upon a final determination.

I therefore hold that the Petitioner was entitled to seek a review of the findings and recommendation of the Commission on the question of jurisdiction, but only to the extent set out in the first proviso to section 22; learned Counsel for the Petitioner did not seek to adduce wider grounds of challenge.

JURISDICTION

The question of jurisdiction arises on account of certain limitations in the Warrant. Section 2(1) (d) permits a Commission to be established to inquire into any matter in respect of which an inquiry will be in the public interest; but this Warrant did not extend beyond subjects specified in section 2(1) (a) and (c). Further, while section 2(1) (c) permits an inquiry regarding "the conduct of any public officer", this Warrant was confined to such conduct "in relation to a public body". The Petitioner's contention is that the Commission had jurisdiction only to inquire into the administration of a "public body" or the conduct of a public officer in relation to a "public body"; that Ceynor is not a "public body"; and that the administration of Ceynor, or the Petitioner's conduct in relation thereto, could not have been inquired into as section 2(1) (d) has not been invoked.

Most of the charges are in relation to Ceynor, and hence much of the argument before us was directed to the question whether Ceynor was a public body.

What is a "public body"?

A "public body" is defined in section 22 of Law No. 7 of 1978 as "including"

"(i) any Ministry and any department of Government;

(ii) any public corporation, Commission, Board or other institution;

(iii) any public or local authority;

(iv) any business undertaking, firm, company or other institution which was at any time during the period specified in the terms of reference of the Commission vested in the Government, or owned wholly or mainly by or on behalf of the Government;

(v) any society registered or deemed to be registered under the Co-operative Societies Law, No. 5 of 1972, or the Janawasama Law, No. 25 of 1976; and

(vi) any other body or institution of a like nature."

A legislative intent to give an extensive meaning to "public body" is evident, not merely from the variety of bodies and institutions enumerated, but also from use of the word "includes", which is appropriate —

> "to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include." — *Dilworth v. Commissioner of Stamps (1)*

The phrase "or other institution" in clauses (ii) and (iv) is also indicative of a legislative intent to expand the scope of those two clauses, at least to other institutions *ejusdem generis* with those specified.

The interpretation of the word "body" presents only a few difficulties of interpretation: its ordinary meaning would be an aggregate of persons, and in the context of this definition, it would include all associations of persons, corporate or unincorporate, as well as a corporation **sole** and a corporation which had no members, natural or legal; it must in fact be considerably wider, for the definition includes a Ministry and a Government department, (neither of which is a legal entity nor, strictly speaking, a body of persons), as well as a "business undertaking". Fortunately, for present purposes, it is unnecessary further to probe the meaning of "body", for quite clearly Ceynor is a body; the question is, Is Ceynor a public body?

There are many familiar uses of the word "public": in perhaps the narrowest sense, "public" is almost synonymous with "executive" (e.g. a "public" officer as defined in the Constitution); in a much wider sense, "public" may embrace anything which concerns the **People** as a whole. What has been said of the expression "**the public**" is equally applicable: it is a term of uncertain import, which must be limited by the context in which it is used (2). Since it is an inclusive definition that we are dealing with, it is the ordinary, popular and natural sense that has to be ascertained, but of course, in the particular context. Would the ordinary usage of the word **"Public"**, in the expression "**public body**" include the Legislature, and allied institutions, such as the Secretary-General of Parliament (Article 65) and his staff or "department"? Would it include the Judiciary, and institutions such as the Judicial Service Commission (Article 112), the Registrars of the Superior Courts (Articles 114, 135 and 147) and the Registries? I have no doubt that it would, in the context of the statute under consideration.

Analysis of the phrases in which the word "public" is used in the body of the definition itself is also relevant. The definition of a "public Corporation" in the Finance Act, No. 38 of 1971, has already been referred to; although this excludes a corporation established by or under the Companies Ordinance, it appears to me that such a corporation is not intrinsically incapable of being a public corporation. On the contrary, the purpose of that Finance Act was to provide for "financial control of public

corporations", in regard to matters such as budgets, viability, the treatment of surpluses, investments, accounts, audit by the Auditor-General, borrowing powers, and dissolution; in regard to companies registered under the Companies Ordinance, the statute, the governing documents and precedents fairly adequately deal with such matters: the mischief which that Act was intended to remedy was in relation to what may be called statutory State corporations. That definition sets out what that expression **"means"** for the purposes of that statute, and thus the exclusion of companies registered under the Companies Ordinance appears to be a restriction on what would otherwise have been the ordinary meaning of "corporation". Again, the purpose of that Act was to provide controls in respect of funds provided by **Government:** accordingly, the definition was further restricted to corporations established with such funds. It is this definition which has been adopted with little change in the Constitution in 1972 and again in 1978.

Thus the phrase "public corporation, ... or other institution", in paragraph (ii), there being no exclusion of those "established ..... under ..... the Companies Ordinance", is wide enough to include such companies.

Paragraph (iii) refers to a **"public authority".** This expression is discussed in **Halsbury** Laws of England 3rd Ed. Vol. 30 p. 682:

> "A public authority is a body, not necessarily a county council, municipal corporation or other local authority, **which has public or statutory duties to perform,** and which performs those duties and carries out its transactions **for the benefit of the public and not for private profit.** Such an authority is not precluded from making a profit **for the public benefit,** but commercial undertakings making profits **for their corporators** are not public authorities, even if conducting undertakings of public utility. A natural or individual person might, **when acting in execution of a public duty,** be a public authority for the purpose of the provisions, now repealed, which formerly enacted a special limitation period for actions against public authorities."

Thus it is implicit in paragraph (iii) that the feature which makes an authority **"public"** is the exercise of public functions, for the

benefit of the public, and not for private profit; profit it may undoubtedly make for the public benefit, but not for its members: *Griffiths v. Smith* (3).

Learned Counsel for the Petitioner cited *Trade Exchange (Ceylon) Ltd. v. Asian Hotels Corporation Ltd.* (4) which merits consideration here. A public limited liability company, 95% of the shares in which were held by a public (Government) corporation, carrying on commercial activities, was held not to be a public authority, vested with statutory powers and duties, and therefore not amenable to Certiorari; one exception to that rule was noted, namely, *R. v. Criminal Injuries Compensation Board, ex p. Lain* (5). Such a company may well be a public body within the meaning of paragraph (iv): clearly, "**public**" has a much wider meaning in the definition under consideration, whereas for the purpose of the prerogative writs, only **statutory** bodies, performing Government functions as an agent, department or organ **of the Executive Government,** would be **public bodies.** The basis on which the exception (8) was justified has some relevance to the role of Ceynor: "the Board was a servant of the Crown charged by the Crown by executive instructions with the duty of distributing the bounty of the Crown"; Ceynor was an instrument of the State, subject to a fiduciary duty (under the 1977 Letter of Intent and the 1979 Agreement) of utilising public funds for specified public purposes.

This is consistent with the ordinary meaning of "public" concerning the people, done by or for the people, or engaged in the affairs or service of the people.

Ministries and Government departments are "public" even in the narrowest sense; undoubtedly they satisfy the test of exercising public functions, for the benefit of the public, otherwise than for private profit.

The bodies enumerated in paragraph (iv) do not appear to satisfy that test directly; being "business" or commercial, the motive of profit is present, perhaps predominantly. However, only such bodies as are either vested in, or wholly or mainly owned by or on behalf of, the Government are included. Thus, despite the

commercial nature of such bodies, their profits are primarily intended for the public benefit; of course, a minority of private owners would also benefit. These would therefore be borderline cases, which might arguably have fallen outside the ordinary meaning of a public corporation or a public authority, thus necessitating an extended statutory meaning. Further, the functions of bodies with commercial objects would not necessarily be public functions; here too it may reasonably be presumed that vesting in Government, or substantial Government ownership, would not have occurred unless their functions approximated to a public service.

Learned Counsel for the Petitioner strenuously contended that **"company"** in paragraph (iv) referred to a company registered under the Companies Ordinance (or Act), that the entire class of such companies as was legislatively intended to be brought within the definition had been included in that paragraph, and therefore that other companies (e.g. those not wholly or mainly owned by or on behalf of Government) could not fall into the residual category in paragraph (vi).

This contention I am unable to accept. An institution which for some reason does not come within paragraph (ii) can nevertheless fall within paragraph (vi), if it is "of a like nature". A society which is not registered under the Co-operative Societies Ordinance, can nevertheless fall into the residual category.

Much attention was devoted to the question whether a company could be **"owned"**, since an incorporated company was legally an entity distinct from its members, who did not in strict legal theory **"own"** the company or any part of its assets; ownership in the case of members who had invested no share capital, and to whom no portion of the profits or assets could ever — not even upon dissolution — be distributed, appeared an even more thorny problem. Various tests were suggested; that the concept of ownership of a company (see section 169 of the Companies Act) is related to the ultimate interest in the success or failure of the venture; that it is related to the right to receive the assets upon dissolution; that ownership is to be equated to membership.

A company is a body of persons combined for a common, especially commercial, object. There are numerous "companies" carrying on various businesses, which are not registered under the Companies Ordinance (or Act), and which are not corporate bodies. Such companies are capable of being owned in the same manner as business undertakings and firms.

Having regard to the context, and the extensive meaning which "public body" ordinarily has, I am of the view that, despite the problems of interpretation posed by the "ownership" of a company, "company" must be given a wide meaning: as including bodies which are corporate as well as unincorporate.

Turning to paragraph (v), a society registered under the Co-operative Societies, Law No. 5 of 1972, has the object of promoting the interests of its members in accordance with co-operative principles; there is no Government representation in its management; members hold the shares in the society, and profits are distributable to the members, after transfers to reserve and a statutory contribution to the Co-operative Fund; there is some degree of supervision, particularly in the area of accounts and audit, by the Registrar of Co-operative Societies, who has also powers of investigation, arbitration and dissolution. The extent of Government control, finance and influence is far less than in the case of a public corporation. It is, however, not difficult to understand why these bodies were brought within the definition of a "public body", for the services rendered by these societies have long been regarded as public services: so much so that the Essential Public Service Act, No. 61 of 1979 —merely enacting into law what was stated in many Essential Service Orders over the years — enables "the services provided by all Co-operative Societies and Unions" to be declared to be essential public services. It is this quality that co-operative societies share with the preceding bodies and institutions.

A Janawasama established under the Janawasama Law, No. 25 of 1976, is similar in many respects to a co-operative society (except that the Janawasama is based on the collective principle, and not the co-operative), with the Janawasama Commission (undoubtedly a public corporation) taking the place of the

Registrar, and having more extensive powers in relation to a Janawasama than the Registrar; the Janawasama Commission has power to stipulate conditions governing the work of a Janawasama (section 2(b) (iii); and could enable a Janawasama to obtain State land (section 10). While the extent of Government support and interest in the case of a Janawasama is greater than in the case of a co-operative society, there is no express legislative provision recognising its functions as a public service: however, it may well be that agriculture, animal husbandry, and agro-based industry, with an emphasis on maximum productivity, maximum utilization of agricultural land, and profit-sharing (see section 9) were considered to be of prime public interest.

Application of the ejusdem generis rule

Learned Counsel who appeared for the Petitioner before the Commission submitted that paragraph (vi) must be construed *ejusdem generis* with the other institutions specified in the definition; he further submitted that the common feature of those institutions is Governmental control through the Minister, and that this dominant feature is totally lacking in the case of Ceynor. That the rule applied does not appear to have been disputed; the Commission referred to *Owners of S.S. Magnhild v. McIntyre Brothers* (6) and *Thames & Mersey Marine Insurance Co. v. Hamilton Frazer & Co.* (7) and set out the rule in these terms:

(1) unless a genus can be found in the specified things, there is no room for its application;

(2) in order to place the specified things which precede the general words under some common category, the specified things must possess some common and dominant feature;

(3) once a common category is found, the question is whether the particular thing in question is within the genus that comprises the specific things, and not whether the particular thing is like one or other of the specified things.

It is in regard to the application of these principles to the definition of "public body" that there is disagreement.

Having examined some of the institutions which fell into each of the first five paragraphs of the definition, the Commission concluded that the common and dominant features which those institutions possess are "Government control, Government financial assistance and performance of public service". Having referred to the facts, the Commission held that "the Government was able, through two of its nominees, one of whom was always Chairman, and through two of the N.G.U. nominees, who were public servants, to exercise control over Ceynor"; that Ceynor "received Government financial assistance and did perform a public service".

Learned Counsel for the Petitioner contends that while Ceynor did receive Government financial assistance, a much larger amount was received from non-Government sources; that the services performed by Ceynor — e.g. building and selling boats to fishermen — were also performed by bodies which were clearly not public bodies, operating purely with a view of profit; that it was not Government control which was relevant, but rather "the right to exercise control", and adds that not only did the Government not have the right to exercise control, but in fact the Government did not control Ceynor.

While I agree, broadly, with the views of the Commission in regard to the common features of the institutions specified, it appears to me, with all respect, that the degree of emphasis placed by the Commission on Government control and financial assistance, as if they were two distinct factors, was excessive. From the preceding examination of paragraphs (i) to (v), I am of the view that the common characteristic — if such can be found — of the specified institutions are —

(a) principally, the rendering of a public service (in its widest sense, including the exercise, performance or discharge of any power, duty or function of a public character) for the public benefit, and not with the object of making profits for its members; and

(b) some degree of Governmental interest, influence or concern, in its affairs (manifested by financial or other material assistance, participation in management through

officers or nominees, the giving of directions or the exercise of supervision, or otherwise).

It is only paragraph (iv) that gives rise to some difficulty. If the *ejusdem generis* rule applies, either the relevant factors are as stated above, and paragraph (iv) has to be restrictively interpreted, to include only those "business" entities which are engaged in a business of intimate concern to the public, or paragraph (iv) has to be given its plain, and wide, meaning, in which event the common factor would be only the second of the factors mentioned above, public service being irrelevant. The first alternative appears to me to be correct: as the definition is of a "public body", the bodies mentioned in paragraph (iv) must also be "public", and accordingly paragraph (iv) must be confined to those bodies which have that characteristic. In *Bradford Corporation v. Myers* (8) an Act entitled the "Public Authorities Protection Act" imposed a limitation on actions "against any person"; it was held that though the word "person" was used, not every person was protected; it was a "**Public** Authorities Protection Act", and therefore the body to be protected must be a public body; likewise, in a statute providing for inquiry into public bodies, the reference to business or commercial bodies must (in the absence of other compelling reasons) refer to those which are also public in character. I need hardly add here "public" is not used in the very different sense in which a "public" company is distinguished from a "private" company.

I am of the view that Ceynor is a public body as defined for several reasons.

Firstly, Ceynor is a "public corporation .... or other institution" within the meaning of paragraph (ii), since that expression (i) does not exclude corporate bodies established under the Companies Ordinance, and (ii) does not require that the establishment of the corporation should have been with funds or capital provided by the Government, (unlike the definition in Article 170 of the Constitution).

Secondly, "company or other institution" in paragraph (iv), in the context of the statute and the amplitude of the definition clause, includes unincorporated companies as well as those registered under the Companies Ordinance (or Act); provided they satisfy the test of being "public". The concept of "ownership", in the strict sense, is inappropriate to a limited liability company, and especially to a company limited by guarantee; in regard to the latter, "ownership" cannot even be equated to the holding of shares. In these circumstances, and bearing in mind that our Company law does contemplate some kind of "ownership" of a company (as indicated by section 169, as well as in concepts such as one company being a "wholly-owned subsidiary" of another), I incline to the view that "ownership" is used in a wide sense so as to include, for instance, beneficial ownership; Ceynor being admittedly a charitable organisation, funded largely by Government sources (as well as other foreign donors, from motives of charity) Ceynor and its undertaking was beneficially owned by the Government, at least as being "the person financially interested in the success or failure of the company".

Finally, even if on a strict interpretation of paragraphs (ii) and (iv) there may appear to be a doubt as to whether Ceynor falls within those provisions, Ceynor is a body or institution which is *ejusdem generis* with the specified institutions, clearly having the two characteristics necessary; and which continued to have them even after the amendment to its Articles (which only reduced, and did not eliminate altogether, the element of Government influence).

I therefore hold that Ceynor was a "public body", and that the Commission did have jurisdiction to inquire into the charges involving the Petitioner's conduct in relation to Ceynor.

I must add that five of the charges (namely those referred to under (1) and (2) (ii) of the summary at the commencement of this judgment) did not relate exclusively to Ceynor. The amendments to the Articles, having the effect of depriving the Government of its right to nominate Directors, was conduct by the Petitioner in relation to the Government, more particularly the

Ministry of Fisheries which previously had the right to nominate; a Ministry is a public body; and the Petitioner's conduct was thus in relation to a public body. Further he was then a Director and Chairman of Ceynor, by virtue of nomination, and the finding of the Commission is that such nomination was by virtue of his having held office as Secretary to the Ministry, i.e. as a public officer; and hence his conduct was as a public officer. The Commission thus had jurisdiction in respect of those charges, whether or not Ceynor was a public body. The position is the same in regard to the other charge which concerned an act done in the Petitioner's capacity as Chairman of the Fisheries Corporation, in relation to a matter affecting that Corporation.

I must observe that the entire argument, before the Commission and in this Court, proceeded on the basis that the *ejusdem generis* rule applied; it seems to me that it was certainly arguable that this rule was inapplicable, and that general words should have received their full and natural meaning, without such limitations as the application of this rule would compel, but in the absence of argument I express no opinion on that question.

ERROR GOING TO JURISDICTION

It remains to consider the Petitioner's further submission (relying on the decisions in the **Anisminic** (9) and other cases, that the Commission in deciding the question of jurisdiction "asked the wrong question" and "applied the wrong test", and thus erred in law; such error was an error going to jurisdiction, although, despite such error in its process of reasoning, the Commission reached the correct conclusion.

In the **Anisminic** case (9) the Respondent Commission was bound by law to treat a claim as established if the applicant satisfied it of certain matters; the applicant established those matters; however, the Commission, misconstruing the relevant provisions, held that an additional condition had to be satisfied, that the applicant had not satisfied that condition, and accordingly rejected the claim. Thus the Commission erred, to the applicant's prejudice, by imposing an additional condition; in

the present case, the Commission has erred, if at all, to the Petitioner's advantage by imposing an additional condition which had to be satisfied by the adverse party before a finding of guilt could be reached against the Petitioner. Apart from that significant difference, it is of vital importance that the House of Lords did not consider a mere error in the process of reasoning sufficient to deprive the tribunal of jurisdiction; it was only an error which resulted in a wrong conclusion as to jurisdiction which had that effect. As Lord Reid observed —

> "But if, on a true construction of the order, (an applicant) does not have to prove (the additional condition); then the commission made an enquiry about a matter which the order did not empower them to make, and they based their decision on a matter which they had no right to take into account
>
> But if they reach a **wrong conclusion** as to the width of their powers, the court must be able to correct that — not because the tribunal has made an error of law, but because as a result of making an error of law, they have dealt with and based their decision on a matter with which, on a true construction of their powers, they had no right to deal . . . So the question is whether on a true construction of the order (the applicant) did or did not have to prove (the additional condition)
>
> The question I have to consider **is not whether they made a wrong decision** but whether they enquired into and **decided a matter which they had no right to consider.**"

In like manner, the question for our consideration is not whether the Commission made a wrong decision, but whether they inquired into and decided a matter — the conduct of the Petitioner in relation to Ceynor — which they had no right to consider; on a true construction of its powers, the Commission did have the right to inquire into that matter; whatever error there might have been in its process of reasoning, the Commission did not reach a **wrong conclusion.**

As Lord Wilberforce pointed out in the same case, "a tribunal may quite properly validly enter on its task, and in the course of carrying it out may make a decision which is invalid — not merely erroneous. This may be described as asking the wrong question or applying the wrong test — **expressions not wholly satisfactory** since they do not, in themselves, distinguish between doing something which is not in the tribunal's area, and doing something wrong within that area — a crucial distinction which the court has to make." Thus it is clear that "asking the wrong question" renders a decision invalid only where something is done which is not in the tribunal's area: "whether (the tribunal) took into consideration **matters outside the ambit of its jurisdiction** and beyond the matters which it was entitled to consider".

The ambit of Certiorari was explained in 1700 (10) in these terms:

> ". . . this Court will examine the proceedings of all jurisdictions erected by Act of Parliament. And if they, under pretence of such Act, proceed to encroach jurisdiction to themselves greater than the Act warrants, this Court will send a certiorari to them . . . ."

The process of reasoning whereby a tribunal came to a conclusion as to its jurisdiction is not decisive. If it held that it did have jurisdiction, and this Court on a true construction of the enabling Act finds that it did not, this Court will (apart from ouster clauses) send a Certiorari to it. If this Court finds, however, that on a true construction of the Act the tribunal did have jurisdiction, whatever error might have been committed in the course of its reasoning, the tribunal cannot be held to have "encroached jurisdiction to themselves greater than the Act warrants"; we cannot send a Certiorari to it. Section 22 of the Interpretation Ordinance confirms this view: Certiorari will issue to the Commission only if its order, decision or report is not within its power.

The other decisions (2) cited by learned Counsel for the Petitioner do not deal directly with this question. They relate,

primarily, to the construction and effect of ouster clauses in very different situations. In **Pearlman's** case (11) the Court of Appeal (Geoffrey Lane, L. J., dissenting) issued Certiorari to quash the order of a County Court, despite an ouster clause. However, this decision was expressly disapproved in the case **Racal** (12) an appeal from a decision of the High Court, declared to be not appealable — by the House of Lords, which considered the reasoning in the dissent of Geoffrey Lane, L. J., to be conclusive. Lord Diplock began by asking himself the question "What principle of statutory interpretation can lead one to suppose that Parliament when it said 'not appealable' really meant 'appealable on some grounds but not on others'?" and concluded "that the words of the statute 'shall not be appealable' mean what they say". That was the only issue in that case, despite *dicta* in that case explaining what **Anisminic** really decided. Geoffrey Lane, L. J.'s dissent was also approved by the Privy Council in *S. E. Asia Fire Bricks v. Non-Metallic Products (etc) Union* (13). In *O'Reilly v. Mackman* (14) four prisoners instituted actions against members of the board of visitors claiming declarations that the board's findings were void; the defendants applied to strike out the proceedings, and this was refused. The Court of Appeal reversed that decision, and the House of Lords agreed with the Court of Appeal: all the remedies for the infringement of rights protected by public law could — particularly in view of various recent procedural changes — be obtained in an "application for judicial review" (provided for by the English Supreme Court Act of 1981), and therefore as a general rule it would be an abuse of the process of the court for a plaintiff to seek redress by an ordinary action. In *R. v. Greater Manchester Coroner, ex. I. Tap.* (15) a Divisional Court of the Queen's Bench Division had to consider the right of judicial review in respect of a coroner's inquest proceedings; the Coroners Act, 1887, gave the High Court wide powers, but exercisable only on application by or under the authority of the Attorney-General, and no such authority had been given; but that Act provided that nothing therein shall prejudice or affect the jurisdiction of the High Court in relation to or over a coroner. It was held, on the merits, that there was no substance in the complaint. However, reference was made to the **Anisminic** case because a previous Divisional Court, relying on a *dictum* of Lord Diplock in the **Racal** case

—that "In **Anisminic,** this House was concerned **only with decisions of administrative tribunals"** — had held that there was no power of review in the case of a coroner's inquest, for an error of law going to jurisdiction. The (second) Divisional Court referred to Lord Diplock's views in the later case of *O'Reilly v. Mackman* (14) which made it "plain that . . . . . . Lord Diplock did not intend to say that the **Anisminic** principle did not extend to inferior courts as well as tribunals".

The **Anisminic** case was rightly hailed as a legal landmark. However, despite many *dicta* about "asking the wrong question", in none of the cases cited was a decision of a court or tribunal quashed on the ground that it had asked the wrong question in arriving at such decision. There appear to be many views as to what **Anisminic** in fact decided, and what it ought to be regarded as having decided: see **Wade** (1) at pages 264-266, and 603-606, and I cannot but concur with his conclusion that "all that can be said with certainty at the present stage is that there is a medley of contradictory opinions in the appellate courts, and the conflict between the rival interpretations . . . . is unresolved."

The Petitioner's final contention thus fails. The Petitioner's application has therefore to be dismissed, but (as the Respondents did not appear and were not represented) without costs.

ATUKORALE, A. C. J. — I agree.

JAMEEL, J.: I agree.

Application dismissed