

G.P.A. SILVA AND OTHERS

v.

SADIQUE AND OTHERS**SUPREME COURT****SAMARAWICKRAME J., THAMOTHERAM J., ISMAIL J.,
WEERARATNE J. AND SHARVANANDA J.****S.C. APPEALS NOS: 15- 29/80.****JUNE 16, 17, 18, 19, 20, 23, 24, 25, 26, 30 AND JULY 1, 2, 3, 4, 7, AND 8,
1980.**

*Writ of Certiorari - Commission of Inquiry - Commissions of Inquiry Act (Cap: 393) -
Natural Justice - Duty to act fairly - Legal attributes of Commission - Whether
Certiorari available to quash findings for alleged failure to observe natural justice.*

*Interpretation of Statutes - Function of the Courts in the interpretation and application
of Statutes.*

The Appellants were appointed Commissioners under the Commissions of Inquiry Act (Cap: 393) by Warrants issued to each of them by the President of Sri Lanka under Section 2 of the said Act to inquire into and report to the President on the administration of the category of Local Authorities referred to in the respective Warrants issued to them. One Commission was appointed in respect of the administration of the twelve Municipal Councils specified in the Schedule to the Warrant, and the other in respect of certain Urban Councils and Town Councils. The Commissions were in similar terms and required each Commissioner to inquire into and report whether there had been incompetence, mismanagement, abuse of power, corruption, irregularities in making appointments, or contraventions of any written Law on the part of the Local Authorities or the Mayor or deputy Mayor or any other persons, and if so the persons responsible for the same and the extent to which they were responsible. The Warrants also called upon the Commissioners to make their recommendations to the President.

The Commissioners made their Reports in which they made findings against the then Minister for Local Government, ex-Mayors, Special Commissioners administering Local Authorities, and members and officials of such Authorities. Thereafter, acting on the Reports, Parliament passed two Laws, the Local Authorities (Imposition of Civic Disability) No. 1, Law No: 38 of 1978, and the Local

Authorities (Imposition of Civic Disabilities) No: 2, Law No: 39 of 1978. These Laws imposed civic and other disabilities on the persons against whom the Commissioners had made findings in their Reports. Fifteen such persons made Applications for Writs of Certiorari to the Court of Appeal to quash the respective findings against them in such Reports on the grounds that the Commissioners had failed to observe the rules of natural justice (*audi alteram partem*) or that there were errors of law on the face of the records.

The Commissioners raised objection in limine on the ground, *inter alia*, that Certiorari did not lie in law to quash Reports made to the President of the Republic pursuant on Inquiries held upon Warrants issued under the Commissions of Inquiry Act. A divisional Bench of the Court of Appeal having heard arguments on the preliminary objection made Order over-ruling the objection, and directed that each Application for Certiorari be set-down for hearing on its merits. The Commissioners appealed against this Order.

Held :

- (i) A Writ of Certiorari will lie to quash an order or decision which is of a binding effect and it either imposes an obligation or involves civil consequences to a person or alters his legal position to his disadvantage, or where such order or decision is a step in a statutory process which would have such effect. The order or decision must be of a body which had legal authority to determine questions affecting rights. It is not essential that the body should be established by Statute (provided it is not merely a private or domestic tribunal) or that the rights must necessarily be rights which are enforceable by action.
- (ii) A Commission of Inquiry established under the Commissions of Inquiry Act (Cap: 393) does not have the legal authority to make binding decisions. Any penalty or consequence that follows a Report of such a Commission is by the action of some other authority or body, although it may be based on the findings contained in the Report. The Report does not take effect *proprio vigore*. Accordingly, Certiorari will not issue.
- (iii) Before any lawfully constituted body arrives at a finding in respect of any person, it is necessary that such body should give a fair hearing to the person concerned. The principle *audi alteram partem* is one that is widely applicable. But no Writ of Certiorari will issue unless the other requirements referred to in (i) and (ii) above are present.
- (iv) Whilst the Courts have power to interpret a law, the weight or reliability of the material upon which the Legislature based or passed the Law is entirely for the Legislature and cannot be examined by the Courts.

Cases Referred to :

1. *R. v. Local Government Board* (1882) Vol: 10 Q.B.D. 309, 321
2. *Wood v. Wood* (1874) L. R. Vol: 9 Ex 190.
3. *R. v. Electricity Commissioners* [1924] 1 K.B. 171.
4. *R. v. Race Relations Board, ex.p. Selvarajan* [1975] 1 WLR 694.
5. *R. v. Criminal Injuries Compensation Board ex.p.Lain* [1967] 2. Q.B. 864.

6. *De Mel v. De Silva* (1950) 51 N.L.R. 105.
7. *Dias v. Abeywardena* (1966) 68 N.L.R. 410, 411.
8. *Fernando v. Jayaratne* (1977) 78 N.L.R. 123.
9. *Breen v. Amalgamated Engineering Union* [1971] 2 Q.B. 175.

APPEALS to the Supreme Court from orders of the Court of Appeal.

K. N. Choksy with K. Kanag Iswaran and L. de Alwis for applicants in S.C. 15/80, 26/80, 26/80, 28/80, 28/80, 29/80, *J. W. Subasinghe with K. Sivanathan* for applicants in S.C. 16/80, 18/80, 18/80, 19/80, 20/80, 21/80, 22/80, 23/80, 24/80, 25/80 *V. S. A. Pulenayagam with Miss K. Abeysondera and Miss D. Wijesinghe* for respondent in S.C. 15/80. *Walter Jayawardene Q.C. with N. Senanayake, S. Jayatilake, Miss S. M. Senarathne and R.G.L. de Silva* for respondent in S.C. 16/80, 25/80 *E. D. Wickremasinghe* for respondent in S.C. 17/80, 29/80, *Harischandra Mendis with N. de Silva* for respondent in S.C. 18/80 and 19/80, *S. Dassanayake with J. C. T. Kotalawela and S.C. Pillai* for respondent in S.C. 20/80, *Nimal Senanayake with S. Jayatilake and Miss K. Abeywardene* for respondent in S.C. 21/80, 23/80, 24/80 *Nimal Senanayake with S. Jayatilake, Miss S. M. Senarathne and R. J. de Silva* for respondent in S.C. 22/80 *E. R. S. R. Coomaraswamy, with J.C.T. Kotalawala, R.K.S. Suresh Chandra and D. Rajaratnam* for respondent in S.C. 26/80, *K. Shanmugalingam* for respondent in S.C. 27/80, *H. L. de Silva with E.D. Wickremasinghe* for respondent in S.C. 28/80.

Cur. adv. vult.

October 09, 1980

HIS LORDSHIP G. T. SAMARAWICKREMA J. READ THE FOLLOWING JUDGEMENT OF THE COURT:

The Respondent-Appellant in each of these fifteen appeals under consideration by this Court is a person to whom His Excellency the President of Sri Lanka, by Warrant dated 19th August, 1977 or 14th September, 1977 under the Public Seal of the Republic, issued a Commission under the Commissions of Inquiry Act (Chapter 393) to inquire into and report on the administration of a class of local authorities referred to in the Commission. One Commission was issued in respect of the affairs of each of the twelve Municipalities specified in the Schedule to the Warrant and the other in respect of the administration of certain Urban Councils and Towns other than Municipalities. The Commissions were in similar terms and required the Commissioner to inquire into and report whether there had been -

- i. incompetence
- ii. mismanagement
- iii. abuse of power
- iv. irregularities in the making of appointments of persons
- v. contravention of any provisions of any written law

on the part of the local authorities or a person or persons appointed under any written law to administer such local authorities or the Mayor or Deputy Mayor or any other person or persons and if so, the person or persons responsible for the same and the extent to which they are responsible. The Commissioners were also asked to make recommendations.

The Commissioners made their reports in which they made findings against several persons. Thereafter, two Bills which have now passed into law as the Local Authorities (Imposition of Civic Disabilities) No. 1, Law No. 38 of 1978 and Local Authorities (Imposition of Civic Disabilities) No. 2, Law No. 39 of 1978 were introduced in Parliament. By each of the said Bills it was sought, inter alia, to impose civic and other disabilities on persons specified in the schedule of the Bill on the basis that findings had been made against them by the reports of the *Commission* referred to in the Bill. Fifteen of the persons referred to in the schedules to the Bills have made applications for Writs of Certiorari in the Court of Appeal on one or more of the following grounds: that there had been failure to observe the principles of natural justice, that the Commissioner had acted in excess of his authority and exceeded his jurisdiction and that there were errors of law on the face of the report.

The Court of Appeal found that there were two questions of law common to all the fifteen applications that may be decided in limine and constituted a Divisional Bench to determine those questions. The two questions set down for determination were whether -

1. the reports and inquiries conducted by the two Commissioners under the provisions of Section 2 of the Commissions of Inquiry Act can be reviewed or can be made the subject matter of review by this Court and whether they are amenable, to a writ of certiorari.
2. in view of Laws Nos. 38 and 39 of 1978, the issue of a Writ of Certiorari will in any event be futile and accordingly whether this Court will in law issue the Writ in the exercise of its discretion.

In the determination of these questions, the Court of Appeal proceeded on the assumption that the allegations in the petitions were correct and addressed its mind to the question whether on that basis the respective petitioners were entitled to the issue of a Writ of Certiorari.

After argument, the Court of Appeal held that a Writ would lie and directed each application to be set down for hearing, whether on the facts and circumstances of the application, a writ should issue. The respondents-appellants have appealed against the order of the Court of Appeal on the two matters decided by them in limine.

Learned Counsel for the respondents-appellants submitted that a Commission appointed by the Commissions of Inquiry Act does not have the legal authority to make a binding decision nor to make a decision that affects the rights of a subject nor is it required to act judicially. It appears to me that before any body can make a finding that any person responsible for any of the matters the Commission was required to inquire into and report, it would be necessary that that body should give a fair hearing to the person concerned, if only for the reason that the requirement to give a fair hearing is one that rests on any person who is called upon to decide anything. The principle *audi alteram partem* is one that is widely applicable and it is not one that applies only in circumstances in which principles of natural justice apply. In this case, apart from the fact of such general requirement, there is the nature of the matter to be found and that section 16 of the Commissions of Inquiry Act provides for such a person to be allowed legal representation. Though learned counsel for the respondents-appellants went so far as to contend that strictly there was in law no obligation on the respondents-appellants to observe the principle of natural justice in respect of giving an opportunity to be heard, the main submission was that a Writ of Certiorari did not lie in respect of the report of a Commission of Inquiry.

The circumstances in which a Writ of Certiorari will issue have been the subject of judicial pronouncements. Brett L.J. in *R. v. Local Government Board* ⁽¹⁾ said-

"Wherever the Legislature entrusts to any body of persons other than to the superior Courts the power of imposing an obligation upon individuals the Courts ought to exercise as widely as they can the power of controlling those bodies if they attempted to exceed their statutory powers."

That this principle applies not merely to statutory bodies, is clear. In *Wood v. Wood*, ⁽²⁾ it was said -

"this rule is not confined to the conduct of strictly legal tribunals but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals."

The classic statement in regard to when a Writ of Certiorari will issue is however found in the judgment of Lord Atkin in *R. v. Electricity Commissioners*,⁽³⁾ in which he held that writs of certiorari and prohibition may issue -

"wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority."

Subsequent decisions and statements of jurists have made it clear that this dictum is not to be considered as defining exactly the circumstances in which a writ of certiorari will issue. It is now accepted that legal authority does not mean statutory authority and rights of subjects do not mean only rights which are legally enforceable.

The circumstances in which preliminary and advisory acts, investigations and orders may be subject to writ have been the subject of decisions as well as comments by jurists. In *R. v. Race Relations Board, ex parte Selvarajan*⁽⁴⁾ it is said -

"The fundamental rule is that, if a person may be subject to pains or penalties, or be exposed to prosecution or proceedings, or be deprived of remedies or redress, or is in some such way adversely affected by the investigations and report, then he should be told the matter against him and afforded a fair opportunity of answering it."

There are certain passages in Wade's "Administrative Law" which are apposite and useful. It states -

"Natural justice is concerned with the exercise of power, that is to say, with acts or orders which produce legal results and in some way alter someone's legal position to his disadvantage but preliminary steps, which in themselves may not involve immediate legal consequences, may lead to acts or orders which do so."

But he states elsewhere -

"some decisions, though important for the person concerned, may involve no real exercise of power over him so as to affect his rights."

Wade also puts it thus -

"Questions affecting the rights of subjects is really co-relative to the idea of legal power the exercise of which necessarily affects some person's legal rights, status or situations."

It appears to be clear that certiorari will also lie where there is some decision, as opposed to a recommendation, which is a prescribed step in a statutory process and leads to an ultimate decision affecting rights even though that decision itself does not immediately affect rights.

From the citations which I have set out, it would appear that a Writ of Certiorari would lie in respect of an order or decision where such order or decision is binding on a person and it either imposes an obligation or involves civil consequences to him or in some way alters his legal position to his disadvantage or where such order or decision is a step in a statutory process which would have such effect. We were referred to the decision in *Rex. v. Criminal Injuries Compensation Board, ex parte Lain* ⁽⁵⁾ and it was urged that that decision has altered the basis upon which a writ of Certiorari may issue. That case had reference to a scheme for compensation to victims of crime. The scheme had been set out in a White Paper and had been debated in both Houses of Parliament and amended thereafter. A large sum amounting to Sterling Pounds 1 Million was voted by Parliament annually for implementing the scheme for payment of compensation in accordance with the rules that had been laid down. The Criminal Injuries Compensation Board was set up to administer the scheme and to make decisions in regard to claims by persons to be entitled to compensation in terms of the Rules. This Board was not set up by Statute and the learned Judges who decided the case said that it has been set up under prerogative power. It has been submitted that Wade had expressed the view that power exercised by the executive in respect of the scheme cannot be considered to be prerogative. Be that as it may, the Judges decided the matter on the basis that a Board had been set up under prerogative power and that in the past even Courts had been set up under prerogative power. The Board had to decide whether in terms of the Rules a person was entitled to compensation and if so in what form. An adverse decision by the Board deprived a person of any claim to compensation in terms of the Rules under this scheme and thus for all practical purposes vitally affected his right to have compensation paid to him. It is true that that right was not one that could be legally enforced but nevertheless unless that decision if incorrect or improperly made was set aside, it was an effective bar to his right to receive compensation.

It does not appear to me, therefore, that the decision in *Lain's* case effected such a fundamental change in the basis upon which a writ of certiorari may issue as is contended for. After that case and the decisions which preceded and followed, it is now clear that writs of certiorari may issue in respect of a body, other than a private or domestic tribunal, which has legal authority to determine questions affecting rights. It is not necessary that that body should be set up under Statute as was supposed earlier. Again, the rights need not necessarily be rights which are enforceable by action.

There is no decision that the report of a Commission under the Commissions of Inquiry Act affects a person's rights; the decisions indicate the contrary. In the case of *De Mel v. De Silva* ⁽⁶⁾ it was held that writs of prohibition may in appropriate circumstances issue to a person to whom a Commission had been given under the Commissions of Inquiry Act but the decision appears to have been made because of provisions under the Colombo Municipal Councils Bribery Commission (Special Provisions) Act No. 32 of 1949. Gratiaen J. in referring the matter for decision by a Divisional Bench said -

"Learned Counsel for the petitioner concedes, I think, that if matters had stood in this way the functions with which the respondent was charged could not properly have been described as judicial or quasi-judicial functions over which this Court could exercise any controlling jurisdiction. Whatever other remedy may or may not have been available to a person who claims to be dissatisfied with the procedure adopted by the respondent in executing his commission, an application for a writ in the nature of prohibition or certiorari would not have been appropriate for the purpose of challenging that procedure.

Learned Counsel, submits, however, that although this is the legal position in cases where a person normally acts as a Commissioner appointed by the Governor-General, supervening legislation which has come into operation since the date of the respondent's appointment has altered the scope of his status and functions. Before the respondent entered upon his investigation of the matters on which he was required to submit his report to the Governor-General, Parliament passed the Colombo Municipal Council Bribery Commission (Special Provisions) Act, No. 32 of 1949"

He later adds -

"Here again one finds that the Act of 1949 does not directly vest the respondent with additional statutory powers; the Legislature has however thought fit, in its wisdom, to declare that any Municipal councillor found by the respondent to have committed a corrupt act as specified in section 5 shall automatically be deprived of certain civic rights as soon as the relevant findings in the respondent's report have been caused by the Governor-General to be published in the Government Gazette. Indeed, the Act seems to give the Governor-General no discretion to decide whether or not such findings shall be made public.

It is argued for the petitioner that by reason of this subsequent legislation the respondent's function, in so far as they are directed towards the investigation of the question whether any particular Municipal Councillor had acted corruptly in a manner contemplated by section 5 of the Act of 1949, have in truth become judicial or quasi-judicial functions in view of the statutory consequences which would inevitably arise from the publications of a finding adverse to the Councillor concerned. Learned Counsel contends that in this state of things the respondent has 'legal authority' - directly or indirectly - 'to determine questions affecting the rights of subjects' (per Atkin L.J. in *R. v. Electricity Commissioners*,⁽³⁾ and that a writ of certiorari or a writ of prohibition may therefore issue from this Court should it be established that the respondent has either exceeded his so-called 'jurisdiction' or, in exercising that 'jurisdiction', violated in some way the fundamental principles of natural justice."

In the course of his judgment in the decision by the Divisional Bench, Wijewardena, C.J. said -

"It is true that the respondent is not expected to make any order in his report affecting the legal rights of the petitioner. It is, in fact, rendered unnecessary in view of section 5(1) of the Colombo Municipal Council Bribery Commission (Special Provisions) Act. No. 32 of 1949, which states in clear terms that the Governor-General "shall" cause the finding to be published "as soon as may be" in the Gazette, if the finding is adverse to the petitioner, and that on such publication the petitioner should be subject to the disqualification set out in that

section. An adverse finding of the Commissioner, therefore, results necessarily in affecting the legal rights of the petitioner."

In the case of *Dias v. Abeywardena*, ⁽⁷⁾ H.N.G. Fernando, S.P.J., quoted the decision in *De Mel v. De Silva (Supra)* and distinguished that case from the case before him.

"In referring the case to a fuller Bench, Gratiaen, J. stated the opinion that the functions of such a Commissioner could not properly be described as judicial or quasi-judicial functions over which the Court could exercise any controlling jurisdiction and that an application for a Writ in the nature of prohibition would not be appropriate for the purpose of challenging the procedure adopted by such a Commissioner. The reason for his opinion is stated in the judgment of Wijeyewardene, C.J. namely, that such a Commission is not expected to make an order affecting the legal rights of persons. What rendered the Commissioner in that particular case amenable to such a Writ was the important additional circumstance that special supplementary legislation enacted by Parliament provided that a finding of the Commissioner that a person had been guilty of bribery would have the effect of depriving such a person of his civic rights. On that ground the Commissioner was held to have "legal authority to determine a question affecting the rights of persons and having the duty to act judicially."

H.N.G. Fernando, S.P.J. further stated as follows -

"Let me suppose that the Commissioner in the instant case makes a report in which is contained a determination that X intercepted certain telephone messages at the instigation of Y and divulged the contents of the messages to Z. There is literally nothing in the Commissions of Inquiry Act by reason of which such a determination can create, affect or prejudice the rights or obligations of X, or Y or Z. Even though the finding which the Commissioner is required to reach according to his terms of reference is that a person unlawfully intercepted a telephone message, the finding would not be one made in terms of the Telecommunication Ordinance, under which the function of determining whether there has been such unlawful interception is committed solely to the ordinary Court. Even if the report of the Commissioner in this case

were to be published, it would not, in the absence of any supplementary legislation, be proof for any purpose that X or Y or Z had (in the example I have taken) done any act found by the Commissioner to have been done by him."

In the case of *Fernando v. Jayaratne* ⁽⁸⁾ Sharvananda, J. stated -

"The only power that the Commissioner has is to inquire and make a report and embody therein his recommendations. He has no power of adjudication in the sense of passing an order which can be enforced proprio vigore, nor does he make a judicial decision. The report of the respondent has no binding force; it is not a step in consequence of which legally enforceable rights may be created or extinguished."

In the decision of the matter in the Court of Appeal, Vythialingam, J. has pointed out that -

"Public Bodies (Prevention of Corruption) Act (Cap. 258) makes these provisions applicable to any Commission of inquiry appointed under the Act. So that if the two Commissioners or either of them did make findings of corruption in the sense of accepting or giving of a bribe against any person who is a member of a public body then in terms of the decisions of the Divisional Bench in *M.W.H. de Silva v. R.A. de Mel* (supra) the Commissioners would be amenable to the writ jurisdiction of this Court."

It was submitted on behalf of the respondents-appellants that there was no finding by the Commissioners of bribery against any person and that Vythialingam, J. erred in basing his decision upon a point that did not arise for decision. It appears to us that the finding of Vythialingam, J. in respect of the effect the provisions of the Public Bodies Prevention of Corruption Act could have had in respect of a finding of corruption against any member of a public body by either of the respondents-appellants, is undoubtedly correct but in the circumstances of this case is academic and of no practical value or relevance. We are, therefore, of the view that no decision of the matter could be based on that finding.

The learned Judges of the Court of Appeal held that among the rights that may be affected by an order or decision which may thereby become amenable to a writ of certiorari is the right to reputation. They further held that a finding that any person had

been responsible for such things as incompetence, mismanagement, abuse of power, corruption, irregularities in the making of appointments or contravention of provisions of any law would shatter his reputation and that accordingly for this reason as well a writ of certiorari would lie. If any person or body has authority to make a finding that is binding on a person that he has been dishonest or guilty of other discreditable conduct such a finding may be said to affect his right to reputation.

For example, if a trade union member elected to be a shop steward by a branch union has to be approved by the main Union or its committee and such approval is withheld on the ground of impropriety in financial dealings with the union, there will be a finding injurious to his reputation and a writ may lie, but if such approval is withheld on the ground that he is temperamentally unsuited to be a shop steward no writ would lie, vide *Breen v. Amalgamated Engineering union* ⁽⁹⁾. The same principle is stated by S.A. de Smith as follows -

“The Courts will be particularly ready to hold that fair procedural standards must be observed where deprivation of or encroachment of a legally recognised interest is consequential on a finding of misconduct or (in some situations) incompetence or where action taken or to be taken involves making an accusation or otherwise casting aspersions on another’s reputation or exposing another to a legal hazard. Sometimes similar action taken in the absence of such findings or allegations will not attract the operation of the audi alteram partem rule.”

In a matter falling under the Commissions of Inquiry Act, though the word “finding” may be used, it means no more than the opinion or conclusion of the Commissioners. As the decisions which I have referred to above make clear, Commissions appointed under this Act cannot make binding decisions. Accordingly, the view of the Commission that a person has been guilty, for example, of abuse of power is not one which by itself attracts any penalty or consequence. The person concerned is entitled to refute it and to claim that it is of no value. If any penalty or consequence is to flow it has to be by reason of other action or other order or decision made by another party even though that may be done in view of the finding of the Commission. As long as the finding of the Commission does not itself have such effect or consequence nor is part of a statutory process which has such effect or consequence, it cannot be considered the exercise of authority which affects the legal right of a person to reputation particularly as it is not binding.

The learned Judges of the Court of Appeal also held that in view of the subsequent legislation by Acts Nos. 38 and 39 of 1978 which impose civic and other disabilities on persons against whom findings had been made by Commissions that the report and the findings of the Commissions were steps in a statutory process which affected the person against whom findings were made. They did not think that it mattered that the Bills were introduced into Parliament and passed into law only after the report of the Commissions had been made. As we have to consider the question whether the Commissioners had and exercised legal authority to decide questions affecting the rights of persons, it seems to us that the matters must be decided on the basis of the facts and circumstances subsisting at the time the findings were made and the reports embodying them were submitted to the President of Sri Lanka. At that time the findings had no sequel or consequence in law and they were no different in character and quality to the findings of any other Commission appointed under the Commissions of Inquiry Act. We are, therefore, of the view that the learned Judges of the Court of Appeal erred in taking the view that the findings of the Commissions were in view of the subsequent legislation amenable to the supervisory jurisdiction of the Court.

It has been pressed upon us by learned Counsel for the petitioners-respondents that we should not overlook the effect of the legislation on the rights of the persons against whom findings have been made. The preamble to the laws make it clear that they were designed to impose civic disabilities on certain persons against whom certain findings had been made by the Commissions. The Legislature has therefore proceeded on the basis that the findings of the Commission were a good and sufficient basis for imposing civic disabilities. We were referred to a passage in the judgment of Lord Parker in the case of *R. v. Engineering Compensation Board, ex parte Lain* which has been approved by Lord Widgerly, C.J.

"The position as I see it is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They are varied from time to time but extended to meet changing conditions."

It was submitted that the requirement of justice demanded the issue of the writ in the circumstances of this matter. It is no doubt the duty of the Courts to prevent or redress injury to individuals by the act of a body with statutory or legal authority. But this does not mean that the Courts have jurisdiction to scrutinize every decision which a member of the public claims has aggrieved him. Judicial

review and the redress of grievances can be obtained only in circumstances recognised by the law. Moreover, even if we were disposed to consider extending the basis upon which a writ may issue, we would not do so if the subsequent laws preclude our giving relief from the civic disabilities. It is necessary therefore to examine Laws No. 38 of 1978 and No. 39 of 1978.

It is necessary first to advert to a submission made by Mr. Walter Jayawardena, that Laws No. 38 of 1978 and No. 39 of 1978 should be regarded as void and inoperative for the reason that at the time the Bills which subsequently purported to pass into law were introduced in Parliament, they were invalid as there was no Bill for the enactment of a Law within the meaning of the relevant provisions in the 1972 Constitution but only a Bill providing for the exercise of judicial power and for the imposition of punishment on named persons. We are unable to accept this contention. The proposed enactments were legislative in form, they did not declare the guilt of any person or persons and though they provided for rigorous disabilities which may be considered the imposition of penalties they did not in fact provide for such punishment as a penal Statute provides.

Laws No. 38 of 1978 and No. 39 of 1978 are laws which are identical in their provisions. Section 2(1) provides -

"Every relevant person shall, for a period of seven years from the date of commencement of this Law, be disqualified from being registered as a voter or from voting at any election of members of any local authority or from being nominated as a candidate at any election of a member or members of any local authority or from being elected or from sitting or voting as a member of any local authority."

"Relevant person" is defined in Section 7 in the interpretation clause, as follows:-

"'relevant person' means a person who has been found by the report of the Commission of Inquiry referred to in this Law -

(a) to have committed or to have aided or abetted in the commission of any act constituting -

- (i) abuse of power,
- (ii) corruption,
- (iii) irregularities in the making of appointments;

- (b) to have contravened, or to have aided or abetted in the contravention of, any provisions of any written law,

and means each person specified in the Schedule to this Law;"

The Schedule to the Law sets out persons by name and describes the office held by him in the Local Authority. It is the contention of the petitioners-respondents that though these persons are so named and specified they would be relevant persons and incur disabilities only if they also fall within any of the categories set out in sub-paragraphs (a) and (b) of the definition of "relevant person". Prima facie, where a person is named and described, one would expect that the law would apply to him without any further condition. Again, though the contention of the petitioners-respondents is that not all the persons specified in the schedule fall within the definition, the words used in the later part of the definition are "each person specified in the schedule in this law." The definition sets out in its first part two categories of persons who would be "relevant persons". The second part reads "and means each person specified in the schedule to the law". It appears to us that this last category is a category independent of the provision of the first part of the definition. All persons named in the Schedules of the two Laws are persons against whom findings have been made in the Reports except for eight persons and each of the eight persons is described as a member of a local body against whom a finding has been made.

It was pointed out that words in the first part of the definition states that relevant person means "a person....." not any person and that if the word "any" had been used it would include all persons. While this is correct, the reason for using the words "a person" and not "any person" may be because of section 4. Section 4 refers to a person against whom a finding has been made who was a State Officer or an employee of the Local Government Service or Local Authority, and makes special provision in regard to the circumstances in which the disqualifications in section 2 should apply to such persons. Accordingly, the term "relevant person" as found in section 2 may not include persons falling under section 4. In any event, the clear and distinct provision in the second part of the definition that 'relevant person' means each person specified in the schedule and the setting out in the schedule of persons by name along with their descriptions renders beyond doubt that such persons are caught up and are persons to whom the relevant provisions of the law applies. All the petitioners-respondents are persons named in the Schedules to the Laws and by reason of the provisions of the Laws have suffered civic disabilities. By reason

of the interpretation which we have placed on the definition of "relevant person", we are unable to agree with the view of the Court of Appeal that it is only a person against whom a finding has been made by a Commission and whose name is specified in the Schedule that suffers civic disabilities.

It has been alleged by the petitioners-respondents that some of them were not given an opportunity of being heard, that one of them appeared as a witness for another party and was never informed that any allegation against him was being considered before the finding had been made against him and that another party in regard to whom the Commissioner in question informed the President that he held no inquiry against him has nevertheless been included in the schedule. This person was, however, a member of a local body and there had been allegations against the local body as such and a finding against that body. The Court of Appeal did not go into the facts and therefore did not make any findings in respect of these allegations nor have we done so. If these allegations be correct, then the findings made are of very little or no value at all. But, while this Court has power to interpret the law, the material on which the Legislature acts is not one that can be examined by us and is a matter for the Legislature. What steps the Legislature has taken or should have taken to examine the weight or the reliability of any material upon which it acts in legislating is entirely for that body and not a matter which the Court can go into.

In the result, we hold that the report and inquiries made by the petitioners-appellants are not amenable in whole or in part to a writ of certiorari. In view of this finding, the second matter that was raised in limine does not really arise but on the view we have taken, if the writ is applied for solely to relieve the petitioner from civic disabilities, obviously it would not be issued.

We set aside the judgment and order made by the Court of Appeal and direct order to be entered dismissing the applications made by the petitioners-respondents except that made in S.C. No. 17/80. Each petitioner-respondent will pay to the respondent-appellant in the respective appeal a sum of Rs 1,000/- which will cover the costs both of the proceedings in the Court of Appeal and of this Court. In Appeal No. 17/80, it is reported that the petitioner-respondent had died and the proceedings must, therefore, be deemed to have abated, hence we make no order in respect of it.

Appeals allowed in all the cases except S.C. 17/80.

Appeal in S. C. 17/80 abated.