J. B. TEXTILES INDUSTRIES LTD.

v.

MINISTER OF FINANCE AND PLANNING

SUPREME COURT.
SAMARAKOON, C. J., WANASUNDERA, J. AND VICTOR PERERA, J.
S. C. APPEAL Nos. 62–65/81 – C. A. APPLICATION Nos. 1137–1140/79.
NOVEMBER 19, 20, 23, 24, 1981.

Business Undertakings (Acquisition) Act, No. 35 of 1971–Vesting Orders made thereunder for the acquisition of the businesses of two companies–Appeal to Minister–Appeal referred to Advisory Board established under statute–Finding of Board that acquisition not made bona fide–Refusal of Minister to revoke vesting order–Whether Hansard admissible to establish course of proceedings in Legislature–Evidence Ordinance, sections 57 (4) and 78–Finding that vesting orders null and void–Writs of certiorari and mandamus.

The Business Undertakings (Acquisition) Act, No. 35 of 1971, provides for the business undertakings as defined in the said Act to be acquired by the Government, one such method of acquisition being by Order referred to as a primary vesting Order published in the Government Gazette. The business of J. B. Textile Industries Ltd. and J. B. Fishing Industries Ltd. were so acquired for the Government by a primary vesting Order dated 6th September, 1977 (P7). There had also been an earlier primary vesting Order dated 29th December, 1976 (P2) which, although published in the Gazette, had not been laid before the National State Assembly within sixty days as required by the statute and had therefore lapsed. The political party which formed the Government at the time P2 was published was defeated at the polls and at the time vesting Order (P7) was published a different political party was in power.

Appeals made by the companies were referred to an Advisory Board established under the provisions of the Act and the Board advised the Minister that the vesting of the businesses was unjustified holding that reasons other than economic reasons had prompted the earlier Government to issue the vesting Order P2. The Minister, however, despite a request made by the Companies refused to revoke vesting Order P7 and the present applications were accordingly made to the Court of Appeal.

The two Companies concerned filed applications for writs of certiorari to quash the vesting Order made by the Minister of Finance who was the authority empowered by the Statute to make such Order and also for writs of mandamus directing the Minister to revoke the vesting Order. In the Court of Appeal these applications were consolidated and one judgment delivered which covered all applications. In terms of this judgment the two applications for writs of certiorari were allowed and those for mandamus dismissed. Appeals were filed in the Supreme Court by the Minister against the quashing by way of certiorari of the vesting Orders and by the companies against the refusal to issue writs of mandamus. These appeals too, were of consent, consolidated and the judgment delivered by the Supreme Court also covered all four appeals.

The Court of Appeal in quashing the vesting Orders had held that the Minister had in contravention of the rules of natural justice failed to grant the appellant a hearing before making the vesting Order which failure vitiated the vesting Order. The Court, however, rejected the argument that the vesting Order was invalid as it was tainted with mala fides. It had been alleged that the first vesting Order was an act of political

victimization in order to satisfy the private political purposes of the Member of Parliament for the area and the subsequent vesting Order (P7) being in fact a "continuation" of P2 was also tainted with the same mala fides. The petitioners relied, inter alia, on the Hansard which contained reports of statements made in Parliament by the then Prime Minister on 20th October, 1977 while counsel on behalf of the Minister argued that Hansard (P9) could not be used in evidence in this way. The Court of Appeal had upheld this objection.

Held

(1) The Court of Appeal had erred in holding that Hansard containing statements made in Parliament could not be used by the petitioner as evidence in support of their case. Hansard is admissible to prove the course of proceedings in the Legislature subject to the qualification that the statement therein must be accepted *in toto* without question. Accordingly the documents P9 and P11 were admissible to prove the statements of the Minister of Finance and the Prime Minister subject to the above qualification.

(2) The objection to Hansard based on section 78 of the Evidence Ordinance concerning the mode of proof could not be upheld as these documents were relied on by the Companies in the Court of Appeal and although the Minister filed objections and affidavits he did not object to any reference being made to a Hansard nor contradict the whole or any part of their contents. The position being that statements made in Parliament cannot be examined in a Court of Law, the further objection that the document could not be admitted because the Prime Minister could not be summoned to Court for the purpose of testing the accuracy of the statement attributed to him could also not be sustained.

(3) Accordingly, once these documents become admissible the Vesting Orders P2 and P7 are clearly linked and P7 was meant to preserve the status quo as established by P2.

(4) The Advisory Board established under the provisions of this Statue is meant to be a safeguard, though not a wholly effective one, against wrong or capricious vesting of private property by the use of the Statute. It has an important role to play in the scheme of the Statute and its finding and advice must not be lightly treated, it having been intended that an impartial and independent body should inquire and advise on the propriety or otherwise of a Vesting Order. The findings of fact by the Advisory Board established the allegation of mala fides in regard to the Vesting Order P2 and the Court of Appeal rightly rejected the documents subsequently tendered in Court to establish bona fides. This material was available to the Minister even before the Advisory Board but it was not produced or made use of and it would appear that this was because he himself did not believe in the truthfulness of the contents of these documents.

(5) The Vesting Order P7 being linked with the Vesting Order P2 which is tainted by the finding of mala fides is therefore null and void and the writs of certiorari issued by the Court of Appeal quashing these orders must stand.

(6) In view of the findings in regard to mala fides it is not necessary to review the decision of the Court of Appeal based on the violation of the rules of natural justice.

Cases referred to

(1) *Church of Scientology v. Johnson Smith, (1972) 1 All E.R. 378; (1971) 3 W.L.R. 434; (1972) 1 Q.B. 522.*

(2) *Davis v. Johnson, (1978) 1 All E.R. 1132.*

(3) *British Railway Board v. Pickin, (1974) 1 All E.R. 609; (1974) A.C. 765; (1974) 2 W.L.R. 208.*

(4) *Stockdale v. Hansard, 9 A.D. & E. 114.*

(5) *Strickland v. Mifsud Bonnici, (1935) A.I.R. (P.C.) 34.*

(6) *De Zoysa v. Wijesinghe, (1945) 46 N.L.R. 433.*

(7) *Weerasinghe v. Samarasinghe, (1966) 69 N.L.R. 262.*

(8) *Schmidt v. Home Office, (1962) 3 All E.R. 795.*

(9) *Laker Airways Ltd. v. Department of Trade, (1977) 2 All E.R. 182; (1977) 2 W.L.R. 234.*

APPEAL from a judgment of the Court of Appeal reported in (1981) 2 Sri L.R. 238.

H. L. de Silva, S.A., with *Gomin Dayasiri and V. Nagendran,* for the petitioner in 62/81 and 63/81 and for the respondent in 64/81 and 65/81.

K. N. Choksy, S.A., with *Ben Eliyathamby, Lakshman de Alwis, A. Soza* and *Ananda Kasturiarachchi,* for the respondent in 62/81 and 63/81 and for the petitioner in 64/81 and 65/81.

Cur. adv. vult.

December 18, 1981.

SAMARAKOON, C. J.

By a primary Vesting Order dated 6.9.1977 (17), the business of Messrs J. B. Textile Industries Ltd. and the business of Messrs J. B. Fishing Industries Ltd. were acquired for the Government under the provisions of the Business Undertakings (Acquisition) Act. No. 35 of 1971 by the Minister of Finance (hereinafter referred to as the Minister). J. B. Textile Industries filed Application No. 1137/79 praying for a writ of mandamus directing the Minister to revoke the Vesting Order, and Application No. 1139/79 praying for a writ of certiorari to quash the Minister's Order. Likewise Messrs J. B. Fishing Industries Ltd. filed Application No. 1138/79 praying for a writ of mandamus directing the Minister to revoke the Vesting Order, and Application No. 1140/79 praying for a writ of certiorari to quash the Minister's Order. The Court of Appeal consolidated the Applications and made one order covering all Applications. It dismissed the two Applications for writs of mandamus and allowed the two Applications for writs of certiorari. The Companies have filed Appeals No. 62/81 and No. 63/81 against the order refusing the applications for a writ of mandamus. The Minister has filed Appeals No. 64/81 and No. 65/81 against the order allowing writs of certiorari. These appeals were by consent

of counsel appearing for both parties consolidated and this Order of mine covers all four appeals. At the conclusion of the hearing we made order dismissing all appeals. I now proceed to give reasons for that order.

The salient facts are these. By primary Vesting Order dated 29.12.76 marked P2 (published in Gazette No. 245/7A of 29.12.1976) made by the then Acting Minister of Finance, in terms of the powers vested in him by section 2 (1) (b) read with section 17 of the Business Undertakings (Acquisition) Act, No. 35 of 1971 (hereinafter referred to as 'the Act') he vested in the Government the two businesses together with their respective movable and immovable property. On 10.1.77 both companies filed appeals with the Minister of Finance against the said Vesting Order. In terms of section 2 (3) of the Act the Vesting Order had to be laid before the National State Assembly within 60 days but this was not done. The National State Assembly was prorogued on 5.2.77 and was never reconvened. It was dissolved on 18.5.77. On 5.7.77 the Companies instituted two actions in the District Court of Colombo challenging the validity of the Vesting Order. Those actions are pending. The political party which formed the Government in the National State Assembly was defeated at the polls by a rival political party and that party formed the Government which took power in July 1977. The Minister (who was the respondent in all four applications before the Court of Appeal and who holds the portfolio of Finance) then proceeded to deal with this vesting. By an Order dated 5.9.1977 published in Gazette No. 281/3 of the same date (P6) he revoked Vesting Order P2. The next day by a Vesting Order in terms of section 2 (1) (b) of the Act published in Gazette No. 281/6 of 6.9.1977 (P7) he once again vested in the Government the two businesses together with their movable and immovable property. The companies appealed against this Order in terms of section 7 of the Act. On 4.10.1977 this Vesting Order was laid before the National State Assembly together with a motion for its approval. By a resolution of 20.10.1977 (P9) the National State Assembly approved the vesting. The appeals of the companies were referred to the Advisory Board appointed by the Prime Minister in terms of section 7 (2) of the Act. That Board after due inquiry advised the Minister that the acquisition of the businesses was unjustified. A request made to the Minister to act on such advice and to revoke the Vesting Order was not acceded to. Hence these applications and consequent appeals.

The Court of Appeal held that the Minister had, in contravention of rules of natural justice, failed to grant the appellants a hearing before making the Vesting Order, which failure vitiated the Vesting Order. It however rejected the argument that the vesting was invalid as it was tainted with *mala fides*. The *mala fides* alleged is the *mala fides* of the Member of Parliament for Kolonnawa who was also Minister of Trade during the period 1970 to 1977. It was alleged that the first Vesting Order of 29.12.1976 (P2) was an act of political victimisation to satiate the private political purpose of that Member of Parliament. Counsel for the companies argued that the subsequent Vesting Order of 6.9.1977 (P7) made by the Minister in 1977 was in fact a "continuation" (that is the word he used) of P2 and was therefore tainted with the same *mala fides.* P2 was bad in law because of *mala fides,* he argued, and therefore P7 was also bad in law because it was a continuation of the *mala fide* vesting made on P2. To establish this link he relied on a statement made in Parliament by the then Prime Minister on the 20th October, 1977, which, *inter alia,* gives the reason for the Vesting Order P7. The Hansard containing this statement was produced marked P9. There is no dispute between the parties on the authenticity of the statement. Counsel for the Minister argued that P9 could not be used in evidence and the Court of Appeal agreed with him. The Hansard P9 is a vital document in the consideration of the allegation of *mala fides.* Ranasinghe J. in his conclusion on the point stated —"if as is clear a Court cannot take into consideration anything said or done in Parliament to aid in the construction of a provision of a Statute passed by Parliament itself still less legitimate would it be for the Court to take into consideration anything so said and done for any other purpose". Ranasinghe J. has referred to three cases. The first is the case of *Church of Scientology v. Johnson—Smith* (1). The defendant in that case was a Member of Parliament. He was sued by the plaintiff for libel for defamatory remarks concerning the plaintiff made by this defendant during a television interview. The defence was one of qualified privilege. To defeat this plea the plaintiff sought to establish express malice by reference to Hansard to prove what the defendant had done and said in Parliament. This attempt was disallowed on the rule that "what is said and done in the House in the course of proceedings there cannot be examined outside Parliament for the purpose of supporting a cause of action even though the cause of action itself arises out of something done outside the House"—per Browne J. There is no doubt that the use of the passages in Hansard would have made

the defendant liable in damages which he would have otherwise avoided. Such use would have been a fetter on the freedom of speech in Parliament besides clinching the claims for damages by what he said or did in the House as a Member of Parliament. Browne, J. added that those paragraphs from Hansard "must involve a suggestion that the defendant was in one way or another acting improperly or with improper motive when he did and said in Parliament the things referred to in the sub-paragraphs". Even in this case certain excerpts from Hansard were in fact permitted to be admitted in evidence and the Court ruled somewhat inconclusively that it could be read simply as evidence of fact, what was in fact said in the House on a particular day by a particular person. The next case referred to by Ranasinghe J. is the case of *Davis v. Johnson* (2) in which Viscount Dilhorne referred to the well established and well known rule that "Counsel cannot refer to Hansard as an aid to the construction of the Statute". I do not think that principle has any relevance to the question that arises for decision in this case. The next case referred to by Ranasinghe, J. is the case of *British Railway Board v. Pickin* (3) in which the House of Lords held that a court of law had no power to examine proceedings in Parliament in order to determine whether the passing of an Act had been obtained by means of fraud or irregularity. No such exercise is necessary in the case before us. None of these cases support the conclusion of Ranasinghe J. when he stated that a statement in Hansard could not be used "for any other purpose" besides the use of it to interpret Statutes. This means that the Hansard cannot be used for any purpose whatsoever. I have come to a different conclusion. For the purpose of setting out my view, I will first refer to the legal background and then set out the passages in Hansard (P9) relied on and then deal with the use sought to be made of it. The Business Undertakings (Acquisition) Act is one of the most drastic pieces of legislation that was ever placed on our statute book. It provides for the compulsory acquisition by the Government of any business undertaking together with the property necessary for the undertaking by the mere publication in the Gazette of a primary Vesting Order. The law does not provide any guidelines as to when an acquisition should be permissible, such as the need for a public purpose or even as a sanction for unlawful conduct of the owners. No reason whatsoever need be assigned for an acquisition.When this law was debated in Parliament, the spokesman forthe then Government stated that there would be two safeguards against the misuse or abuse of this law. They are first, that Cabinet

approval must be given for an acquisition and, second, that the law has cast a mandatory duty on the Minister of Finance to have the primary Vesting Order laid before Parliament for its approval within a specified period of time thus providing the opportunity for a full debate on the proposed acquisition. From this it would be seen that Parliamentary intervention is a step in the procedure for acquisition and is an integral part of the acquisition process. Column 1748 of P9 reports the Minister as having said thus:

> "These acquisitions cannot be allowed to lapse once they are gazetted. The correct procedure for me is to bring this before the House and get it approved. The Court action can take its own course. There is the possibility of an appeal to the Advisory Board. I can assure the Hon. Leader of the Opposition that we will be very fair in this matter. This matter will be considered purely on the basis of fair play and justice."

Columns 1749 and 1750 reports the Prime Minister (now the President of the Republic) as saying:

> "May I explain? Jafferjee Brothers had a textile mill in Kolonnawa. The previous Government took action under the Business Undertakings (Acquisition) Act to acquire it. Before that motion was placed before the House and passed Parliament was dissolved. The owners went to court. They would have succeeded in their court proceedings had not our Government renewed that motion. We decided to fight it ourselves. Now, this is sanction for the acquisition. Whether the original acquisition was victimization or not I cannot say, but our Government will not support any victimization. We have already released two or three acquisitions thich were made as a result of political victimization, the Ceramics Factory in the South and one or two others.
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> The owners can go before Business Undertakings (Acquisition) Act Advisory Board, which was created when the Act was brought. As a result of pressure by the then Opposition that this Act may be misused, the Prime Minister of the day and Mr. Felix R. D. Bandaranaike said that they would set up this Business Undertakings (Acquisition) Act Advisory Board. I do not know whether any appeal has gone before the Board during that period but during our period one appeal has gone before it and they have allowed it. I think in the case of Ceylon

Silks they appealed on the ground of victimization. We have not acted on that decision yet. That Board considered of members appointed by the previous Government. So they cannot say that we are in any way tampering with them.

Now, this owner cannot go before this Board unless this motion is passed. It is open to him to go before the Board and show that the acquisition was victimization. It is not our acquisition. We are only following the previous acquisition. If that Board holds that it is victimization we will release it. Otherwise, we do not wish to be the target of attack that we are supporting capitalists. We do not intend to do that—not even in regard to capitalists who were running behind the previous Government and who are now running behind our Government. We will be fair to them all. So, to help the owner to go before the Business Undertakings (Acquisition) Act Advisory Board, we must pass this motion first; otherwise everything will be in the air."

Counsel for the Minister first made reference to the provisions of section 78 of the Evidence Ordinance. This concerns the mode of proof. Hansard P9, P10 and P11 each state that it is an "Official Report" of "Parliamentary Debates". These documents and their contents were relied on by the companies. They were pleaded in the petitions and affidavits filed in each case. The Minister filed objections and affidavits in each case. In neither of them did he object to any reference being made to the Hansard nor did he contradict the whole or any part of their contents. I cannot see how he can now ask that they be rejected for want of proof.

Counsel next submitted that the contents of these Hansards should not be admitted in evidence because the Prime Minister could not be summoned to Court for the purpose of testing the accuracy of the statements attributed to him. Counsel stated that he could establish that the statements were mistakenly made but that he was in no position to demonstrate this without questioning the Prime Minister in Court as he ran the risk of committing a breach of Privilege of Parliament. I cannot accede to this argument. He presumes that the Prime Minister if summoned and questioned, would admit that he was mistaken. Such a presumption cannot support his contention.If he was possessed of facts which showed that he Prime Minister was mistaken it is open

to him to prove such facts by adducing the evidence upon which he relied to make the allegation. However it must be borne in mind that statements made in Parliament cannot be examined in a Court of Law. "Whatever is done or said in either House should not be liable to examination elsewhere"— per Patteson, J. in *Stockdale v. Hansard* (4) at 209. This was said of the House of Parliament in the United Kingdom and it holds good in this country too.

Hansards are admissible to prove the course of proceedings in the Legislature (section 57 (4) Evidence Ordinance). They are evidence of what was stated by any speaker in the Legislature: *Strickland v. Mifsud Bonnici* (5) at 35, *De Zoysa v. Wijesinghe* (6) at 437, *Weerasinghe v. Samarasinghe* (7) at 264. However even this use of statements is subject to some qualification. One such is that the statements must be accepted *in toto*—without question.

The privilege of having debates in Parliament unquestioned is indispensable. "By consequence whatever is done within the walls of either Assembly must pass without question in any other place"—per Denman, C.J. in *Stuckdale v. Hansard* (4). So it must pass here. Parliamentary reports have been used in this way in many reported cases. In *Schmidt v. Home Office* (8) at 798, a written answer by the Home Minister to a Parliamentary question was used to judge the Home Minister's conduct. In *Laker Airways Ltd v. Department of Trade* (9) an announcement in the House of Commons on Civil Aviation Policy was used for the purpose of the deciding the dispute in the case. In an action for defamation thė best, and I believe the only, method of judging whether a report in a newspaper of paliamentary proceedings is a fair and accurate report of what was said in Parliament is by examination of the relevant proceedings in the Hansard. Such use of Hansard without in anyway committing a breach of privilege is permissible and necessary in the administration of justice. The Hansard is the official publication of Parliament. It is published to keep the public informed of what takes place in Parliament. It is neither sacrosant nor untouchable. Comment and criticism are on a different plane which might give rise to a breach of privilege. That aspect does not arise for decision here. I am of the view that documents P9 and P11 are admissible to prove statements of the Minister and Prime Minister subject to the rules limiting their use as hereinbefore stated.

P9 contains an important statement made by no less a person than the Prime Minister of the country, setting out the reasons for the second vesting of these enterprises. He states quite categorically that the Vesting Order P7 is being placed before the House to deal with a situtation that arose during the period of the previous regime. He states also that the whole exercise is for the purpose of giving the owners a right of appeal and for the purpose of avoiding undue criticism of the Government. Lastly he makes it abundantly clear that the acquisition resulting from the Vesting Order P7 is not their acquistion. His words are "It is not our acquisition. We are only following the previous acquisition. If that Board holds that it is victimisation. We will release it." This links it to the acquisition on Vesting Order P2. It is therefore manifestly clear that P7 was meant to preserve the *status quo* of P2. It was left to the Advisory Board to decide whether P2 was victimisation. I have no doubt that the Government was wedded to the fact that if the Advisory Board found that *mala fides* attached to P2 then such infirmity would fall upon P7 also. I therefore hold that P2 must be linked with P7 and that if P2 was tainted with *mala fides* such *mala fides* attaches to P7.

I will now deal with the question of *mala fides.* In the appeals to the Minister the companies state that P2 was "instigated by T. B. Illangaratne, the former Member of Parliament for Kolonnawa, as an act of political and personal revenge" against the management of the Companies. This allegation, though in different form was repeated in all the petitions and affidavits filed in the Court of Appeal. The Companies led evidence before the Advisory Board to support the allegation of mala fides. It consisted mainly of the oral evidence of Anura Weeraratne who was Secretary to the Ministry of Industries and Scientific Affairs from 1st March, 1972 to 16th May, 1977, and was therefore personally concerned in the steps leading to the vesting on P2. The Textile Industry was a subject of this Ministry. His evidence shows that the vesting was made at the request of the said Illangaratne who had pressurised the Prime Minister and Minister of Industries, when they showed reluctance to agree to the vesting. Some of the reasons given by the said Illangaratne were that "Jafferjees were politically against him in his electorate and all recruits and all vacancies were not being filled up from Kolonnawa but people were being brought in from Batticaloa to fill the vacancies". Weeraratne also stated that the economic reasons for Vesting Order were insufficient to justify the take over. Nevertheless it was

done because Illangaratne insisted on it. This evidence was uncontradicted. In fact the Deputy Solictor General who appeared for the Minister at the inquiry, consulting the Attorney-General, who in turn had consulted the Minister, stated that the Minister had considered the evidence led through Weeraratne and that he had no material "to contradict or controvert material placed before the Board" up to and including the evidence of Weeraratne. The Deputy Solicitor General stated he was not possessed of material to cross-examine the three witnesses. The Minister did not lead any evidence. In this state of the case the Board had no alternative but to hold that reasons other than economic reasons prompted the Government to issue Vesting Order P2. The Board further observed that the reasons given by the then Government do not justify the take over. In the result the Board advised the Minister that the vesting of the businesses was unjustified. It is significant that the vesting in respect of which the Board advised the Minister included the vesting on both P2 and P7 although P7 was the only Vesting Order referred to it for advice.

Consequent on this advice of the Board the companies requested the Minister to revoke the Vesting Order P7 but this the Minister refused to do and the companies therefore made these applications which are the subject of this appeal. The Minister now states that he is not bound to act upon such advice. Perhaps he is correct but I do not need to decide that question. The Minister has in his pleadings before the Court of Appeal sought to justify the vesting on P2 (not P7). In paragraph 20 of his objections he states as follows: –

"20. (a) A primary vesting order under section 2(1)(b) of the Business Undertakings (Acquisition) Act No. 35 of 1971 had been made by the respondent's predecessor in office on 29th December 1976.

(b) The official documents and other material available to the respondent show that the said business undertaking had been vested upon a policy and administrative decision made by his predecessor in office at the request of the then Minister of Industries and Scientific Affairs (Hon. T. B. Subasinghe) and the then Minister of Fisheries (Hon. S. D. R. Jayaratne), in consultation with the then Cabinet of Ministers, in furtherance of governmental policy.

(c) The said decision had been made after a consideration by the respondent's predecessor in office and the aforesaid two

Ministers and the then Cabinet of Ministers of, *inter alia,* Ministerial Memorandum and Reports of administrative officials, including Secretaries to the relevant Ministries.

(d) Upon the respondent assuming office after the last general election in July 1977, the respondent and the relevant Ministers reviewed and reconsidered whether or not the vesting of the business undertaking in the State should continue, and decided that it should.

22. The respondent states that he had material upon which to so act, and annexes hereto true copies of the undernoted documents which were available to him amongst other material in the making of the decision not to revoke the primary vesting order of the 6th September, 1977. This material contradicts the petitioner's allegation that the first primary vesting order made on 29th December, 1976, had been made "*mala fide* and for extraneous reasons and to achieve certain partisan political objectives of the then Member of Parliament for Kolonnawa in which electorate the petitioner's business undertaking was situated":

(i) Decision of the Cabinet made on 1.12.1976, (marked R. 1)

(ii) Report of E. G. Goonewardena, Secretary, Ministry of Fisheries, dated 7.12.1976, (marked R. 2);

(iii) Memorandum submitted by Hon. S. D. R. Jayaratne, Minister of Fisheries, and Hon. T. B. Subasinghe, Minister of Industries and Scientific Affairs, dated 28.12.1976, (marked R. 3);

(iv) Decision of the Cabinet made on 29.12.1976, (marked R. 4);

(v) Memorandum submitted by Hon. S. D. R. Jayaratne, Minister of Fisheries, dated 17.2.1977, (marked R. 5);

(vi) Decision of the Cabinet made on 16th March, 1977, (marked R. 6);

(vii) Copy of letter dated 16.8.1977 sent by the respondent to Hon. Wijepala Mendis, Minister of Textile Industries (marked R. 7);

(viii) Reply dated 19.8.1977 received by the respondent, (marked R. 8);

(ix) Minute dated 19.8.1977 made by the Hon. Minister of Industries, Hon. Minister of Textile Industries and the Respondent, (marked R. 9);

(x) Report dated 24.8.1977 submitted by G. A. de Zoysa, Competent Authority (marked R. 10);

(xi) Report of A. B. Elkaduwa, Secretary, Ministry of Textile Industries dated 14.10.1977 addressed to the Secretary to the Prime Minister, (marked R. 11);

(xii) Decision of the Cabinet made on 29.3.1978, (marked R. 12);

(xiii) Decision of the Cabinet made on 3.5.1978, (marked R. 13);

(xiv) Memorandum dated 10.5.1978 submitted to the respondent by Hon. Wijepala Mendis, Minister of Textile Industries, (marked R. 14);

(xv) Decision of the Cabinet made on 10.5.1978 (marked R. 15);

(xvi) Decision of the Cabinet made on 24.5.1978 (marked R. 16)".

This material was available to the Minister even before the Vesting Order P7. On the 16th August, 1977, the Minister addressed letter R7 to the Minister of Textile Industries. In it he draws the attention of the Minister of Textile Industries to the Joint Memorandum (R3) by the then Minister of Industries and the then Minister of Fisheries to the Cabinet (pleaded in para 22 of his objection) and the decision of the Cabinet to acquire these two businesses. He requests his colleague to "examine the reasons for the take over and advise the Cabinet very early whether a fresh Vesting Order should be made". There seems to have been a discussion between the two Ministers subsequently and the Minister of Textile Industries wrote R8 stating that "it was agreed" that a fresh Vesting Order should be made. A joint declaration by the Minister of Textile Industries and the Minister of Industries addressed to the Minister (Vide R9 of 19.8.77) informed him that they agreed that "J.B. Textiles should continue under government control". (This did not refer to J. B. Fishing Industries Ltd.). This has been placed before the Cabinet and approved by it on the same day. Vesting Order P7 followed. These and other documents referred to in para 22 of the objections were available to, and were within the knowledge of, the Minister before the issue of Vesting

Order P7. Now he states that they negatived the plea of *mala fides.* If that were so it is passing strange why he did not use them to refute the allegations made before the Advisory Board. On the contrary he advised his Counsel that no material was available to him to contradict the allegations of the Companies which specifically included an allegation of *mala fides.* He either deliberately kept them away from the Board or he did not at the time believe in the truthfulness of the contents of those documents. Perhaps it is the latter. I am inclined to this view because of the evidence of Weeraratne before the Board which suggested that the joint report P3 was merely a cover for the real reason and the fact that the Minister had in his possession and was aware of and even discussed with his colleagues the documents he now relies on. Furthermore no party to a proceeding should be allowed to play fast and loose in this manner. The Board is a statutory body meant to be a safeguard, though not a wholly effective one, against wrong or capricious vesting of private property by the use of the Statute. It has an important role to play in the scheme of the Statute and its findings and its advice must not be lightly treated. The legislature's intention in establishing this Board is a salutary one. It intended that an impartial and independent body should inquire and advise on the propriety or otherwise of a Vesting Order. The findings of fact by the Board impel one to the conclusion that the documents tendered in support of the *bona fides* of the vesting on P2 are in fact a cover for the real reason as stated by Weeraratne. The Court of Appeal has rejected them for the reason that they were not produced by the Minister when the first opportunity presented itself—that is before the Board – and therefore they were not subject to scrutiny by the Companies and the Board. This is an added reason for not accepting them now. The material placed before the Court establishes the allegation of *mala fides* in the vesting on P2. The vesting on P7, linked as it is to P2, is therefore null and void. Courts have always acted to grant redress in cases such as this (See De Smith's Judicial Review of Administrative Action" Edn 4 pages 335-337 and the cases cited therein.) The Writs of Certiorari issued by the Court of Appeal must stand.

A clue to the *volte face* of the Minister is to be found in Hansard P11 of the 4th January, 1979. In the course of a debate in Parliament on the Land Acquisition (Amendment) Bill the Member

of Parliament for Kankesanturai queries why these businesses had not been handed back to the previous owners in spite of the Board's finding that the take-over "was an unfair act of political victimization". The Minister of Irrigation, Power and Highways gave the reason thus:

> "The Government has to decide as a matter of public policy whether it should implement the findings of the committee. In this particular case, we had a problem. The entire labour union was against the handing over of this particular business enterprise back to the former owners. Besides, the Hon Minister concerned was able to satisfy the Government that this business was better under public management than under private management. On that there was a difference of opinion, I think. As to whether it should be handed back or not, ultimately the Government decided that it was not going to hand it back. But, of course, the owners would get compensation in full for the take-over of this business. In fact, the Government offered to the former owners an opportunity of collaboration on the basis of 49 per cent and 51 per cent, which they rejected."

The Minister gives a different reason. In paragraph 21 of his objections he gives his reasons as follows:

> "The said decision not to revoke the said primary vesting order dated 6th September 1977 was necessitated by reason, *inter alia,* of the government's policy of industrial direction, the co-ordination of the production and supply of necessary commodities, furtherance of governmental policy relating to the manner of utilisation of industrial labour, the maintenance of reasonable price levels, and in the fulfilment of the public interests."

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

In view of my findings on the allegation of *mala fides* I do not consider it necessary to review the decision of the Court of Appeal based on the allegation that natural justice had not been done. That matter will remain open.

Wanasundera, J. – I agree
Victor Perera, J. – I agree

Appeal dismissed