NANAYAKKARA
v.
UNIVERSITY OF PERADENIYA AND OTHERS

COURT OF APPEAL.
SENEVIRATNE, J. (PRESIDENT) AND B. E. DE SILVA, J.
C.A. APPLICATION 987/83.
OCTOBER 2, 3, 4, 5 AND NOVEMBER 16, 1984.

Certiorari and Mandamus – Suspension of student – University Council – Universities Act No. 16 of 1978, sections 29 (n), 34(2), (3), (6), 44(1), 45(1), (2)(iii), (xviii), 131, 135(1), (d) – Power of Vice-Chancellor and the University Council to maintain discipline – Compendium of Rules and Regulations, sections 1, 2, 3, 4 – Natural justice – Right to a fair hearing.

The petitioner a final year student in the Arts Faculty of the University of Peradeniya and a resident in Akbar Hall was suspended for three years and deprived of the privileges of his studentship with effect from 1.7.1983 on the ground that a Committee of Inquiry to inquire into student disturbances in the University in December 1982 had found him guilty of participating in the attacks on various Halls of the University on 3.12.1982 about 9.00 p.m. and committing mischief. The decision to suspend was by the University Council and communicated by the Vice-Chancellor. The petitioner moved for writs of Certiorari and Mandamus on the ground (1) that no by-laws had been made in terms of the Universities Act defining what acts constitute indiscipline and what punishment such acts would attract and (2) the Report of the Committee of Inquiry was invalid because the petitioner did not have a fair hearing.

Held –

(1) Some by-laws had been framed to regulate and provide for discipline. These were the Compendium of Rules and Regulations of 6.7.1981. The Vice-Chancellor as the Chief Executive Officer of the University and the University Council are clothed with sufficient power to deal with breaches of discipline even where they were not covered by the Compendium. They can exercise this power in a fair manner as regards determining what acts would constitute breaches of discipline and what punishments such breaches should attract.

(2) The petitioner having been taken before the Committee of Inquiry on 7.3.1983 without prior notice and given time till 2.00 p.m. that day for his defence, it cannot be said that he had been given a fair hearing as he had not been informed of the allegations against him and their nature prior to his appearance before the Committee nor given a fair opportunity of making his defence properly. Even though he did not request it this is a case where the petitioner should have been given an opportunity to cross-examine the witnesses who had testified against him.

Cases referred to :

(1) *De Saram v. Panditharatne [1984] 2 SLR 106.*

(2) *Ram Chander Roy v. Allahabad University and Others AIR 1956 Allahabad, Andra 46.*

(3) *Manoharan v. President, Peradeniya Campus, University of Sri Lanka, Vol. 1 Pt. 11 Bar Association Law Journal Reports 45.*

(4) *Ganeshanantham v. Goonewardene [1984] 1 SLR 343.*

(5) *University of Ceylon v. E. F. W. Fernando (P.C.) (1960) 61 NLR 305.*

(6) *De Verteuill v. Kanaggs [1918] AC 557, 560.*

APPLICATION for Writs of Certiorari and Mandamus.

Nimal Senanayake, P.C. with *Mrs. A. B. Dissanayake, L. M. Samarasinghe* and *R. Jayendran* for petitioner.

K. N. Choksy, P.C. with *L. H. N. Jayamaha* and *Kumar Nadesan* for 1 to 4 respondents.

Cur. adv. vult.

April 2, 1985.

SENEVIRATNE, J. (President)

The petitioner who has filed this application on 22.8.83 was a final year student in the Arts Faculty of the University of Peradeniya, and a resident in the Akbar Hall. On 1.7.83 he received the letter dated 30.6.83 (marked 'A') from the Vice-Chancellor, H. L. Panditharatne the 2nd respondent to this application. I shall quote the entire letter as it is material in respect of the facts pertaining to this application and the submissions made to this Court. This letter (marked 'A'), which is in Sinhala (translated) is as follows :

"The Council at its special meeting held on 9.6.83, considered the report of the Committee appointed to inquire into the disturbances and mischief caused by the students in December 1982, and held that you have on 3rd December, 1982 at about 9 p.m. participated in the attacks made on the Marcus Fernando Hall, Marrs Hall, Arunachalam Hall and other Halls, and committed mischief, and as such the Council decided that your studentship should be suspended for 3 years with effect from

1.7.83. As such you should consider that the Peradeniya University premises is a prohibited premises for you, and if you are an occupant in any hostel, you should quit the hostel before 9 a.m. on 2.7.83."

The facts disclose that there were student disturbances in the University of Peradeniya Campus from 3.12.82 to 5.12.82, during which disturbances hurt was caused to certain students and damage was caused to certain Halls of residence. On 14.12.82 the Council of the University of Peradeniya appointed a Committee of Inquiry consisting of (1) C. V. Udalagama, a retired Supreme Court Judge, (2) D. J. E. Seneviratne, a retired Deputy Director of Education and (3) L. R. L. Perera, a retired Deputy Director of Agriculture (Engineering), Ex Chairman, State Engineering Corporation of Sri Lanka, who are the 3rd, 4th and 5th respondents to this application. This Committee after inquiry submitted its report on 20.3.83.In this report the Committee found this petitioner guilty of the acts set out in the letter marked 'A', and recommended the expulsion of the petitioner from the University for his conduct. The Council of the University, which considered this report imposed on the petitioner the punishment of suspension of his studentship for a period of 3 years from 1.7.83 and prohibited him from entering the University premises (letter 'A'). The petitioner has made this application–

(1) For an order in the nature of a Writ of Certiorari quashing the orders of suspension, and otherpunishments set out in document (A) ; and

(2) For as issue of an order in the nature of Mandamus to compel the 1st and 2nd respondents to afford all facilities for the petitioner to reside in the University premises, and follow the lectures, and sit for the degree examination.

The petitioner has stated that when he received this letter of suspension, he had in fact duly made an application and taken all steps to qualify to appear as a candidate in the final examination which was to be held in 1983.

The main grounds on which the petitioner has based his application fall into two categories :–

(1) Disciplinary powers of the Vice-Chancellor of the University ;

(2) The invalidity of the Report of the Committee of Inquiry.

The grounds under (1) are :

(*a*) No rules have been framed under section 29(*n*) of the Universities Act No. 16 of 1978 to *regulate* and provide for discipline, (the emphasis on the word 'regulate' is mine) ;

(*b*) Section 34(6) of the said Act which states – "The Vice-Chancellor shall be responsible for the maintenance of discipline within a University", should be read with section 29(*a*) of the said act, which provides that the University shall have power to "regulate and provide for the . . . . discipline and well being of students. . . . . ".

(*c*) The Committee has been appointed by the University Council, the Report has been made to the Council and the punishment has been determined by the University Council. This Act provides "that the Vice-Chancellor shall be responsible for the maintenance of discipline" (section 34(6)) ; it does not enable the Vice-Chancellor to delegate his powers regarding discipline to the Council.

(*d*) The Council has no power to punish the petitioner, and any punishment must be done by the Vice-Chancellor.

As regards (2) above, the invalidity of the report of the Committee, the grounds are that –

(*a*) The petitioner did not have a fair inquiry before the Committee on whose report disciplinary action was taken against him ;

(*b*) The petitioner was not informed of the charges before the inquiry, or before his suspension from the University ;

(*c*) The petitioner did not know who the witnesses against him were, and what their accusations against him were ;

(*d*) The Committee was biased and prejudiced against the petitioner.

Only the 1st to 4th respondents have filed objections. The objections state that the petitioner's studentship and his rights as a student were subject to the due observance by the petitioner of the rules and regulations of the University authorities. The respondents have filed as a document – "Compendium of the Rules and Regulations" (R3) made by the University on 6.7.81. The punishment meted out to the petitioner was done in the interests of discipline of the institution and is a reasonable one in the context of the "horrid incidents and acts of violence committed". (Para 13(*F*)). That the University authorities have acted in accordance with the provisions of Act No. 16 of 1978 in the context of maintenance of discipline of the institution (Para 13 (*g*)). The 1st to 4th respondents have also in the objections denied the various allegations made in the petition, and have stated that the petitioner is not entitled to the relief he claims. The 3rd respondent the Chairman of the said Committee, C. V. Udalagama has filed an affidavit, in which he has denied the various allegations made in the affidavit of the petitioner. The 3rd respondent has specifically affirmed as follows :–"that the committee informed the petitioner of all the allegations against him, and he was at all times given every opportunity to exonerate himself. . . . . The petitioner appeared before us at about 11.00 a.m. and he informed us that he had a lecture to attend at that hour and wanted us to put off the evidence for the afternoon. We readily acceded to his request and requested the petitioner to come at 2 p.m. when his evidence was duly recorded without any pressure or duress."

The petitioner has filed a counter affidavit in reply to the affidavits filed by the 1st to 4th respondents, in which he has affirmed as follows :–

(1) It is absolutely false to say that I was given any opportunity of being heard ;

(2) No information was given to me of any incidents I was concerned in :

(3) I was asked where I was on 3rd December, 1982 ;

(4) I was not informed that an inquiry had been held and if I was aware I would have retained the services of a lawyer ;

(5) There is no record in the minutes kept by the Committee of Inquiry that I was informed of the allegations against me ;

(6) I was not informed of the gist of the testimony of those who testified against me, and no opportunity was given to challenge or rebut this testimony.

I will now refer to all the provisions in the Universities Act No. 16 of 1978, which deal with the maintenance of discipline. Section 29 – deals with the powers, duties and functions of the University.

Section 29(*n*) is as follows :

"to regulate and provide for the . . . . . . discipline and well being of students . . . . of the University".

The following are the sections which deal with the powers of the Vice-Chancellor.

Section 34(2) is as follows :

"The Vice-Chancellor . . . . shall be. . . . . the principal executive officer. . . . . and shall be . . . . . an ex-officiomember and Chairman of . . . . the Council"

Section 34(3) :

"It shall be the duty of the Vice-Chancellor, in accordance with such directions as may from time to time be lawfully issued to him in that behalf by the Council, to ensure that the provisions of this Act. . . . . are duly observed. . . . . ".

The most relevant section to this application is section 34(6):

"The Vice-Chancellor shall be responsible for the maintenance of discipline within University".

The Universities Act sets out the powers of the Council – section 44(1):

"The Council of a University . . . . shall be the executive body and the governing authority of the University and shall consist of the following persons :

(i) The Vice-Chancellor

Section 147 defines the term "governing authority"– Governing authority in relation to –

(1) a University, means the Council of that University.

Section 45(1):–

"Subject to the provisions of this Act, the Council shall exercise the powers and perform and discharge the duties and functions conferred or imposed on, or assigned to the University".

45(2)(iii)–

"To regulate and to determine all matters concerning the University in accordance with the provisions of this Act and of any appropriate Instrument".

45(2) (xviii)–

"To exercise all other powers of the University the exercise of which is not otherwise provided for in this Act or any appropriate Instrument".

I will now refer to a section which is relevant to the submissions made by the petitioner under section 29(*n*) of this Act, which has not been referred to in the course of the argument, that is section 135(1)–By-laws. Section 135(1) read with 135(*d*) is as follows :–

". . . . . By-laws may be made by the governing authority of a Higher Educational Institution in respect of all or any of the following matters :–

(*d*) The conditions of residence and the discipline of students"

It must be observed that this section is more relevant to the making of By-laws regarding the maintenance of discipline of students than the sections referred to in course of the argument. I must emphasise the fact that section 135(1) clearly lays down - "that By-laws *may be made* by the governing authority". (The underlining is mine for emphasis). The provisions I have quoted as regards the powers of the University, the Vice-Chancellor and the Council of the University regarding the maintenance of discipline of the students show that the powers of the Vice-Chancellor and the two bodies, the University and the Council of the University are complementary as regards the maintenance of discipline. The most important argument submitted on behalf of the petitioner was that the Vice-Chancellor though clothed with the responsibility to maintain discipline (section 34(6)) has not been given the powers to do so by the failure on the part of the University to frame regulations under section 29(*n*). The sections cited above show that the powers of the University to "regulate and provide for . . . . discipline" is vested in both the Vice-Chancellor and the Council, which is under the Act the Governing Body.

The petitioner has over and over again pressed the argument that the Vice-Chancellor could not execute his powers for the maintenance of discipline because under section 29(*n*), no by-laws or regulations

have been framed in respect of discipline. The argument was that as there were no rules pertaining to discipline, the University students will not know which acts would constitute a breach of discipline, and what would be the punishment for such breaches of discipline. According to this argument the Vice-Chancellor (and also the Council) did not have any executive power to maintain discipline and as such what would prevail in the University is the law of the jungle (which presently only now and then prevails in the University). Factually it is not correct to say that the University has not framed any Rules and Regulations pertaining to discipline. The Respondents have filed as (R3) Compendium of Rules and Regulations – governing the residence and discipline in the University framed on 6.7.81, long before the incident which led to the appointment of the Udalagama Committee. The submission that the University has not framed any Rules and Regulations to implement the maintenance of discipline by the Vice-Chancellor and as such he cannot exercise such powers set down in the Act, was first raised in the case of *De Saram v. Panditharatna* (1) decided on 15.6.84, which was an application for a writ of Prohibition against the Vice-Chancellor of the Peradeniya University. This case was the result of disciplinary action taken by the Vice-Chancellor of the Peradeniya University against the student Saram for disturbing the peace of the University during the period 11th to 17th of July 1983, during which period also there had been serious disturbances by the students. In that application neither party had produced this Compendium of Rules (R3), filed in the present application, in which section 1 contains rules re discipline in general, sections 2 and 3 contain rules pertaining to particular matters. I have mentioned (R3) for the present for this specific purpose to show that some rules have been framed for maintenance of discipline. I will deal with (R3) more fully later.

I will first consider the question whether framing of rules is imperative and absolutely necessary for the University, and the Vice-Chancellor to exercise the power for the maintenance of discipline. Can the Vice-Chancellor maintain discipline in respect of the acts of the students which may fall outside the scope of the Compendium of Rules and Regulations (R3) which will be tantamount to breaches of discipline. I am of the view that as the said Act has vested the power in the University, Vice-Chancellor and the Council to maintain discipline, these bodies and particularly the Vice-Chancellor as the Chief Executive Officer of the University – can exercise this

power in a fair manner, both as regards which acts would constitute breaches of discipline, and what punishment should be imposed for such breaches without such rules and regulations having been framed under the relevant provisions referred to above. If this reasonable view was not taken the Vice-Chancellor cannot maintain discipline in this University which material before this Court shows has a student population of nearly 5,000. In *De Saram's Case (supra)* T. D G. de Alwis, J. has held that "Section 29(*n*) of the Act does not make it mandatory for the Council to make Regulations whereas section 34(6) positively casts the duty of maintaining discipline in the University on the Vice-Chancellor. The failure or omission of the Council to make Regulations under section 29(*n*) of the Act cannot in my view relieve the Vice-Chancellor of his responsibility to maintain discipline in the University".

The case of *Ram Chander Roy v. Allahabad University and Others* (2) was an instance in which a student of the Allahabad University had been punished for breach of discipline, in that he participated in a demonstration against the Vice-Chancellor when he attended its convocation. The relevant provision in the statute pertaining to discipline in the Calendar of the Allahabad University for the year 1952-53 was as follows :-

> "The Vice-Chancellor shall be responsible for maintaining discipline in the University and he shall have all powers necessary for the purpose".

The contention of the Counsel for the petitioner Ram Chander Roy was that though powers had been conferred by the statute on the Vice-Chancellor these powers were expressed in very wide and indefinite terms and were capable of being exercised in such a manner as to bring about discrimination not permissible under Article 14 of the Constitution. It was urged that no criterion was laid down for determining when action was needed for maintaining discipline, or, even to determine the scope of the word 'discipline'. It was further urged that the nature and extent of the punishment that could be awarded by the Vice-Chancellor was not indicated at all and no limitations were placed on his power of awarding any type of punishment that he desired to do. The Court held that the powers to be exercised for maintaining discipline must be to the extent necessary for achieving that object. In disciplinary matters, punishments can be of numerous types. The choice of appropriate punishment has been

left to the Vice-Chancellor. This dicta from the above case are relevant to the submissions made in the present application regarding the powers of discipline and punishment which the Vice-Chancellor of the Peradeniya University can exercise.

The main submission of the petitioner in this application, and that of the petitioner de Saram in his application was, that there were no regulations regulating the powers of discipline and disciplinary punishment as regards the Peradeniya University, that the students were not aware of the acts or conduct which will be tantamount to a breach of discipline and the punishment for such. I agree with the decision in *de Saram's* application that section 29(*n*) of the Act has not made it imperative that regulations regarding discipline should be made. However, I held that whether there were regulations or not the Act empowers the University, the Vice-Chancellor (and also the Council) to maintain discipline in the University. As such even if regulations have not been made it is left to the discretion of the Vice-Chanceller to exercise his powers of maintaining discipline and imposing punishments for its breaches in a fair and just manner. Factually it is not correct to state that there are no such Rules and Regulations. The Compendium of Rules and Regulations dated 6.7.81 (R3) regarding discipline has been filed by the respondents. Section (1) of this Compendium (R3) deals with disciplne–general and Regulation (4) is the most relevant section to this application–

Regulation 4 is as follows :–

"The Vice-Chancellor may, where any student is guilty of any breach of the University Act of the Regulations made thereunder or any other Regulations or of conduct prejudicial to the good name of the University, or is irregular in his attendance at lectures or classes impose any of the following punishments :–

(*a*) A fine ;

(*b*) Exclusion from common rooms or other privileges ;

(*c*) Suspension from the University for a definite or indefinite period ;

(*d*) Dismissal from the University ;

(*e*) Withdrawal from any University examination.

The decision taken by the Vice-Chancellor shall be placed before the Council".

In Regulation 4 the limb which is relevant to this application is the one " . . . . .or of conduct prejudicial to the good name of the University", and among the punishments (*c*) and (*e*). The letter (A) dated 30.6.83 which has been filed by the petitioner, shows that the report of the Committee of Inquiry has been placed before the Council by the Vice-Chancellor. The letter of suspension (A) has been signed by the Vice-Chancellor the 2nd respondent himself. I overrule all the objections to the effect that neither the University nor the Vice-Chancellor was clothed with the powers to exercise the duty of maintaining discipline which was cast on them.

I must briefly refer to another submission made to the effect that the Vice-Chancellor in this instance had delegated his powers of maintaining discipline and imposing punishment to the Council. There has been no such delegation. As pointed out earlier, the Vice-Chancellor is also a part of the University Council as he is an ex-officio member and Chairman of the Council. He is also required by law to carry out the directions lawfully issued to him by the Council. As regards the submission that the Vice-Chancellor had delegated his powers pertaining to the maintenance of discipline to the Council, the learned Counsel for the petitioner rested his case on the decision in *Manoharan v. President, Peradeniya Campus, University of Sri Lanka* (3). The material on which it was held in that case that there has been no delegation or a wrongful delegation of the powers of the Vice-Chancellor to the President, University Peradeniya Campus is quite different from the material which is the subject matter of this application. Further, it was held that the President who exercised the powers of discipline had merely reduced himself "to a rubber stamp of the inquiring body", that is the one man Committee of Inquiry that was appointed by the University. In the present application the Vice-Chancellor has not delegated any of his powers, to any person or body.

The second ground urged by the petitioner was as regards the invalidity of the report of the Committee of Inquiry. The submissions on this ground can be summed up as, one, that the petitioner did not have a fair hearing before the Committee of Inquiry which has found him guilty of various breaches of discipline and recommended punishment. According to the petitioner he had no notice whatsoever that the Committee was considering and inquiring into any allegations of breaches of discipline against him. The petitioner has set out in his affidavit the circumstances under which he appeared before the

Committee. He has affirmed that on 7.3.83 at about 10 a.m. he was returning from the lecture hall in the Arts Faculty Block when he was informed by Daya Nikabotiya, Assistant Registrar that one Ranasinghe wished to meet him in the Senate building and that he came to know later that Ranasinghe was the Secretary to the Committee of Inquiry into student disturbances. The petitioner then affirms that he believed that it was in connection with a dramatic performance, but he was in fact ushered into a room where 3rd, 4th and 5th respondents were sitting as the Committee of Inquiry, and who wanted to question him. The respondents have produced document (R2) notice of the sittings of the Committee of Inquiry signed by one U. L. S. Ranasinghe, Secretary to the Committee and submitted that the petitioner's pretence not to know that Ranasinghe was the Secretary of the Committee, and that a Committee of Inquiry was sitting, was a false position.

The University students must and ought to have known that a Committee of Inquiry was sitting. This shows that the above affirmations of the petitioner are a mere pretence. I do not call it falsehood. The petitioner has further affirmed that when he entered the room the 3rd respondent informed him that he and the 4th and 5th respondents were sitting as a Committee of Inquiry and wanted to question him. The petitioner has then stated to the Committee that he had no intimation of the proceedings before the Commitee and was not prepared to submit to any questioning. The 3rd respondent, however, warned him to be present at 2. p.m. for questioning and that he would face disciplinary action by the University if he did not attend. As regards the petitioner's affirmation regarding the manner in which he was ushered before the Committee unexpectedly, neither Daya Nikabotiya the Assistant Registrar, nor U. L. S. Ranasinghe the Secretary of the Committee of Inquiry, has filed a counter affidavit controverting these affirmations of the petitioner. In the course of the argument the learned President's Counsel for the respondents stated that the respondents admit that the petitioner did not get a notice to appear before the Committee on 7.3.83, but was taken before the Committee on that day and given time till 2. p.m.

In order to get a more accurate picture of how and under what circumstances this petitioner would have appeared before the Committee of Inquiry, this Court called for the relevant proceedings of the Committee which would throw light on this matter. Learned

President's Counsel for the respondents produced Volume II of the report along with extracts of the relevant proceedings. Those proceedings show that the petitioner had in fact appeared before the Committee on 2.3.83. (the date mentioned by the petitioner as 7.3.83 is an error) The proceedings of that date show that on 2.3.83 at 10.30 a.m. the Committee has called a witness Dr. B. A. R. C. Jayasinghe and recorded his evidence which consists of a few lines and immediately after that is recorded the appearance of the petitioner. The full record at this point is as follows :–"Sarath Nanayakkara, Faculty of Arts, Final Year. I am a resident at Akbar Hall". After that is recorded the name of another witness Lalith Wijeratne – 12.00 noon, and his evidence is recorded. There is no record whatsoever as to the reasons why the taking of Nanayakkara's, evidence had stopped at that point, that is between 10.30 a.m. and 12 noon. On the same day at 2.30 p.m. it is recorded Sarath Nanayakkara, Faculty of Arts, Final Year, and there is a fairly comprehensive record of the evidence of this petitioner. The report does not have any record :

(*a*) That Nanayakkara applied for further time when he was ushered in unexpectedly, and I suppose unceremoniously at 10.30 a.m. ;

(*b*) As to why the taking of the evidence of Sarath Nanayakkara has abruptly stopped at 10.30 a.m. nor is there such record when Nanayakkara again appeared at 2.30 p.m. ;

(*c*) That Nanayakkara was informed of the allegations that have been made against him by the witnesses, and what these allegations were.

Part of the evidence of Nanayakkara recorded is in narrative form as if Nanayakkara had made that narration. But certain parts show that questions have been asked from him, such as the sentences which start as "I deny" or "I did not". The best evidence that the petitioner was informed of allegations against him would be the record of the proceedings when the petitioner appeared before the Committee in this situation, in which the petitioner and the 3rd respondent have filed contradictory affidavits on this aspect of the petitioner's case.

From the facts I have set out above one matter is clear, that the petitioner appeared before the Committee without any prior notice and unexpectedly. When the petitioner appeared before the

Committee he appeared as an "accused" or a "respondent party" and not as a witness. By then the Committee had decided that the petitioner should be questioned as regards the allegations made against him by the witnesses. As such the Committee was in duty bound to inform the petitioner of the allegations – "charges" against him and give him every opportunity of making his defence. Any need for haste and expediency cannot be a reason to override these principles of natural justice – right to a fair hearing. As the petitioner was appearing before this Committee on 2.3.83 not as a witness, but as a "party respondent" or as a party "accused"–in the words of Wanasundera, J. in *Ganeshananthan v. Goonewardene* (4)–

> "From that stage onwards such a person would be in the position of a party, in contradiction to that of a witness, if the language and the analogy of Court proceedings can be adopted in that context. Once the conduct of a person is the subject of the inquiry, he must be afforded all the rights and privileges of a party".

I will consider some previous instances in which a University has called a student before an Inquiry Committee appointed by the University in respect of charges against him. In the case of the *University of Ceylon v. E. F. W. Fernando* (Privy Council) (5) the judgment shows that Fernando against whom the University of Ceylon decided to hold an inquiry in respect of an examination offence was informed by letter dated 16.5.62, of the allegations against him, and was requested to attend a meeting of the Commission appointed for inquiry. The letter to Fernando was as follows as quoted by Lord Jenkins in his judgment.

"Dear Mr. Fernando,

An allegation has been made to me in writing that you had acquired knowledge of the content of one or more of the papers set at the Final Examination of Science, Section B. Zoology, before the date of the examination. Since this is a very serious allegation . . . . that the allegation is sufficiently circumstantial to justify a formal inquiry.

I have therefore appointed a commission. . . . . . . a meeting be held. . . . . .on Wednesday, 21st May, at 5 p.m. and that you be requested to attend. I should be glad if you would attend on this occasion. . . . . . .

Yours sincerely,

Sgd. Ivor Jennings.
Vice Chancellor."

Manoharan's Case cited by me above was an inquiry held by a one man Committee in 1977 into an examination offence. In the judgment it was stated as follows :–

> "The Deputy Registrar of Peradeniya Campus charged the petitioner by letter dated 18.4.77 that he had been in possession of pre-written notes while answering the question paper in Agricultural Engineering on 30.3.1977. . . . . . ".

He was asked to furnish his explanation as to why he should not be punished. In his explanation of 26.4.77 the petitioner pleaded "not guilty". After the explanation a Committee of Inquiry was appointed to inquire into the matter and the Committee found the petitioner guilty.

De Saram's Case cited by me above was also the result of the disciplinary action taken against Saram by the University of Peradeniya. The student De Saram was suspended from the University pending inquiry, by letter dated 20.12.83, which letter set out the reasons for his suspension–disturbing the peace of the University. After the suspension by letter dated 16.1.84, the Vice Chancellor informed the petitioner that he had appointed P. H. Victor Silva, B.A. (Lond.) Advocate the 3rd respondent, to inquire into the allegations of any indiscipline and misconduct which formed the basis of the letter of suspension. As far as this Court is aware these are the three previously decided instances in which disciplinary action against a University student had resulted in a writ application being made to Court. (There is now pending in this Court, due for judgment, an application for a writ of Certiorari, by a student of the University of Colombo in respect of disciplinary action taken against her by the University for an examination offence–Application No. C. A. 853/83). In each of these three instances referred to by me, before the defaulting student appeared before the Inquiry Committee, such defaulter had been clearly informed of the allegations against him. For a fair inquiry into allegations against any person, such a person should be clearly and in advance informed of the allegations against him, so that he can prepare himself to meet the case against him. In this instance, Nanayakkara was on this day 2.3.83 made to appear before the Committee of Inquiry, which the respondents have in their objection sought to show was a high-powered Committee, without any prior information of the allegations against him. The allegations were so serious and grave that any finding against the petitioner would undoubtedly cause irreparable damage to his entire career in the

University and future prospects of life. In my view this is hardly a manner in which a student facing such serious allegations, which if proved, would be followed by severe punishment, should be made to appear before a Committee and defend himself. Nanayakkara may be an unruly student, but he is not one who can be presumed to know how to defend himself when faced with such a serious situation unexpectedly.

I will now deal with the submissions made regarding the conduct of the inquiry before the Committee and the complaint that the petitioner did not have a fair inquiry. It has been held in the Privy Council case of *University of Ceylon v. E. F. W. Fernando (supra)* that a disciplinary inquiry held by the University is a quasi-judicial inquiry, and that the requirements of natural justice have to be met by the procedure adopted in any given case, which must depend to a great extent on the facts and circumstances of the case in point. This case has held that– in general the requirements of natural justice are – "first, that the person accused should know the nature of the accusation made , secondly, that he should be given an opportunity to state his case , and thirdly, that the tribunal should act in good faith". It was held in this case that as no procedure was laid down to be followed by the Vice-Chancellor in this kind of inquiry in satisfying himself regarding the allegations, and as the Vice-Chancellor's function was admittedly quasi-judicial, it was for him to determine the procedure to be followed as he thought best, but with due regard to the principles of natural justice.

The complaints made regarding the nature of the inquiry held against the petitioner in this instance are that–

(*a*) The petitioner was not given prior information of the allegations against him.

I have held that the petitioner was not given any prior information of the allegations against him as in previous reported instances of this type of inquiries held by the Vice-Chancellor of the University.

I have held that there is no record made that the allegations against the petitioner were communicated when he was unceremoniously ushered in before the Committee.

(*b*) That the names of the witnesses who had given evidence against the petitioner and the gist of their evidence were not given to the petitioner.

(*c*) The petitioner was not given an opportunity to cross-examine the witnesses, and such other like objections were taken.

Similar complaints had been made by the plaintiff Fernando in the said *University of Ceylon v. Fernando Case* (*supra*). The main complaint of Fernando was to the effect that the evidence including that of the crucial witness Miss Balasingham, who gave direct evidence regarding the examination offences committed by Fernando, was taken in his absence and he was not aware of the evidence led against him or of the case he had to meet. The 2nd complaint was that Fernando was not at any stage offered an opportunity to question Miss Balasingham or any other witnesses who deposed against him. On the other hand plaintiff Fernando was interviewed and questioned at length about the matter by the three members of the Commission. The Privy Council summed up the objections to the inquiry taken by Fernando as follows :

"The present appeal resolves itself into the question whether this inquiry was conducted with due regard to the rights accorded by the principles of natural justice to the plaintiff as the person against whom it was directed".

Pertaining to the requirements to observe the principles of natural justice in an inquiry of this nature, Their Lordships of the Privy Council have cited the following dicta from the case of *De Verteuil v. Kanaggs* (6).

"Their Lordships are of opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice".

Their Lordships of the Privy Council have in this case considered whether the fact that the material witness Miss Balasingham and other witnesses were not questioned in the presence and hearing of the plaintiff, who consequently was not able to question them on the statements they made, involved a violation of the requirements of natural justice. Their Lordships held that as Fernando was by letter dated 16.5.52 adequately informed of the case he had to meet, and that on the evidence accepted, Fernando was informed at the two interviews with him of the nature of the allegations made against him and given a fair opportunity to correct or contradict any relevant statements to his prejudice, there was no prejudice to the principles of natural justice and the duty to hold a fair inquiry. Their Lordships of the Privy Council then considered whether this procedure "has fallen short" of the requirements of natural justice on the ground that the plaintiff was given no opportunity of questioning Miss Balasingham. She was the one essential witness against the plaintiff and the charge in the end resolved itself into a matter of her word against his. In Their Lordships view this might have been a more formidable objection if the plaintiff had asked to be allowed to question Miss Balasingham and his request had been refused. But he never made any such request, although he had ample time to consider his position in the period of ten days or so between the two interviews. There is no ground for supposing that if the plaintiff had made such a request it would not have been granted. Their Lordships then went on to state as follows :

> "It therefore appears to Their Lordships that the only complaint which could be made against the Commission on this score was that they failed to volunteer the suggestion that the plaintiff might question Miss Balasingham or in other words to tender her unasked for cross-examination by the plaintiff. Their Lordships cannot regard this omission, or a fortiori the like omission with respect to other witnesses, as sufficient to invalidate the proceedings of the Commission as failing to comply with the requirements of natural justice in the circumstances of the present case".

Thus, Their Lordships held against Fernando on the above complaints on which he claimed that the principles of natural justice have been violated.

I will consider the submissions made by this petitioner that in the conduct of the inquiry there was a violation of principles of natural justice. The Privy Council laid down in *Fernando's Case* (*supra*) that the general principles of natural justice in this type of quasi-judicial inquiry required –

(1) That the person should know the nature of the accusation made ;

(2) That he should be given an opportunity to state his case ;

(3) That the tribunal should act in good faith.

The Privy Council has also laid down that in this type of quasi-judicial inquiry it was left to the Vice-Chancellor to determine the procedure to be followed as he thinks best with due regard to the principles of natural justice.

Their Lordships of the Privy Council have laid great stress and placed importance on the fact that Fernando had been informed of the nature of the allegation against him by letter dated 16.5.52. It was in this context that their Lordships held that the fact that the witnesses Miss Balasingham and others made their statements in the absence of Fernando has not caused a miscarriage of justice in respect of Fernando.

Regarding the second principle laid down by the Privy Council that a person should be given an opportunity to state his case, the facts I have set out earlier are very relevant–

(*a*) The manner in which this petitioner was taken before the Committee on 2.3.83 ;

(*b*) The petitioner in his affidavit has denied that he was informed of the allegations against him when he appeared before the Committee.

The 3rd respondent C. V. Udalagama has filed an affidavit, in which he affirms that the petitioner was informed of all the allegations against him and was at all times given every opportunity to exonerate himself. The record of the proceedings do not reveal the fact that the

petitioner was informed of all the allegations against him, which appear to be those made by several witnesses. In any event, even if the charges were informed the petitioner has not been given sufficient time, to prepare himself to meet the allegations. The allegations concerned incidents which spread for three days, 3rd December 1982 to 5th December 1982, in which a large number of students had participated. The immediate cause for the incidents was the elections to the Students Council, which were followed by processions held by rival parties. So that the nature of the incident in respect of which this petitioner faced charges, cannot at all be compared to the sole charge faced by Fernando pertaining to one matter, namely that he had previous knowledge of the German part of the Physics paper, and further there was only one material witness against Fernando – Miss Balasingham, which witness all Courts accepted was one of an independent kind.

Fernando's Case (supra) was one filed in the District Court of Colombo for a declaration. In the case Dr. Ivor Jennings, the Vice-Chancellor gave evidence, and his evidence was that at the inquiry the plaintiff Fernando was informed of the "charge" Miss Balasingham made against him and given every opportunity to make his defence. Fernando himself has given evidence, which evidence is quoted verbatim in the judgment, and he has categorically stated that when he appeared before the Commission and when he was questioned by a member of the Committee – Keuneman (retired Justice of the Supreme Court) – "I felt that she had reported that I have had these words in one of my books before the examination". So that there was testimony in Fernando's case that when he appeared before the Commission :–

(*a*) He had got a letter informing him of the allegations ;

(*b*) And that the Commission unequivocally informed him of the "charge" made by Miss Balasingham against him and gave him every opportunity to defend himself.

For these reasons the Privy Council held that the questioning of Miss Balasingham and other witnesses in the absence of Fernando had not violated any principles of natural justice.

I will now deal with the allegation that Fernando was not given any opportunity to question witnesses. Their Lordships have not laid down a hard and fast rule that in this type of inquiry there was no need to permit cross-examination of witnesses, and that if it was not so permitted, it will not be a violation of the principles of a fair inquiry. One of the points made by Their Lordships was that Fernando had not moved to question the witnesses which he could have done, and this has been held against Fernando. I am of the view that the circumstances under which the petitioner in this case appeared before the Committee did not permit him or give him sufficient opportunity to think over on his own and make a request for an opportunity to question the witnesses. Their Lordships have considered the position whether complaint can be made that the Commission failed to volunteer the suggestion that the plaintiff might wish to question Miss Balasingham or in other words to tender her unasked for cross-examination by the plaintiff. The ruling on that matter by Their Lordships is that the omission to do so would not be a "failing to comply with the requirements of natural justice in the circumstances of the present case".

In the present application before this court the disturbances which were the subject matter of inquiry by this Committee of Inquiry were the result of the general elections held to the student bodies of the Peradeniya University. The report of the Committee (A 1) shows that there were several students groups. The most prominent among these groups were two – (1) Eksath Samavadi Shishya Peramuna (2) Samajavadi Shishya Sangamaya. The former group was considered and known to be a pro-government group, and the latter group was considered and known to be an anti-government group. Both these Shishya Peramunas were politically motivated. There was extremely bitter rivalry and antagonism at the personal, political and union level between these two groups. After the elections both these groups went in rival processions and it is in this context that the disturbances occurred and mischief alleged against the students caused. It is in evidence that these processions consisted of monk-students, girl-students, male students and ex-students, and that those who participated in the processions were armed with stones and sticks etc. This report reveals that the groups of persons responsible for the maintenance of the discipline in the University, i.e. the wardens of the Hostels and the security guards were also politically divided and partisan, and had their own bias towards certain Shishya Peramunas.

It is in this background of bitter personal, political and union rivalry as revealed, that the witnesses have given evidence. Hardly a witness who appeared before the Committee can be said to be free of personal and political bias. As it was in this context that evidence has been placed before the Committee, this was a very glaring instance in which the testimony of the witnesses, particularly the evidence of students of rival Peramunas ought to have been scrutinised and tested by cross – examination. Ex parte statements made by such biased and prejudiced witnesses would have undoubtedly caused great prejudice to the petitioner, who was considered as a leader of the Samajavadi Shishya Sangamaya. In his own words, the petitioner has stated as follows :

> "I contested for a post in the Science Faculty Union against Samavadis Group candidate . . . . . I am a member of the present Students Council representing the Samajavadi Students Union at the Arts Faculty".

I hold that in the context of the material placed before this Court, this was an instance in which the Committee should have volunteered the suggestion that the plaintiff might wish to question the witnesses or in other words tendered the witnesses unasked, for cross-examination by this petitioner. The failure to do so has caused irreparable prejudice to the petitioner at this inquiry.

For the reasons set out above I hold that the petitioner has not had a fair hearing before this Committee in that –

(1) The petitioner has not been informed of the allegations against him and their nature prior to his appearance before the Committee :

(2) The petitioner had been on 2.3.83 suddenly and unexpectedly taken before the Committee of Inquiry when he was returning from a lecture hall. In this situation the petitioner cannot be expected to make a defence properly.

These allegations which have been affirmed to by the petitioner have not been denied by Daya Nikabotiya, Assistant Registrar and Ranasinghe referred to in the affidavit of the petitioner.

(3) In view of the contradictory affidavits filed there is no firm evidence that the petitioner was informed of the allegations against him when he appeared before the Committee as an "accused" person. In any event, there is no record that such allegations were informed.

(4) This is an instance in which the petitioner should have been given an opportunity of questioning the witnesses who had testified against him.

There is an allegation of bias and prejudice against the Committee. It is not necessary for me to discuss this allegation.

The right to a fair hearing is a "rule of universal application" and in case of administrative acts or decisions affecting the rights the duty to afford it "is a duty lying upon everyone who decides anything". The Courts have in general held that "Academic disciplinary proceedings required the observance of the principles of natural justice, but equally they have refused to apply unduly strict standards provided that the proceedings are substantially fair" H.W.R. Wade – Administrative Law (5th Ed :) page 501.

Judged by these tests, for the reasons given above I hold that the petitioner has not got a fair hearing before the Committee. In the result grant the petitioner –

(*a*) An order in the nature of a Writ of Certiorari quashing the orders of suspension and other punishments set out in document "A" ;

(*b*) An order in the nature of Mandamus to compel the 1st and 2nd respondents to afford all facilities for the petitioner to reside in the University premises and follow lectures and sit for the degree examination.

The application is allowed with costs.

B. E. DE. SILVA, J. – I agree.

Writs issued.