CHULASUBADRA DE SILVA

v.

THE UNIVERSITY OF COLOMBO AND OTHERS

SUPREME COURT.
SHARVANANDA, C.J., COLIN-THOMÉ, J. AND ATUKORALE, J.
S.C. No. 52/85.
C.A. No. 851/83.
JUNE 2, 3, 4 AND 5, 1986.

Writs of Certiorari and Mandamus—Natural justice—Presentation of witnesses for cross-examination—Information of the charge—Legal representation.

The petitioner a university student was found guilty of taking into the Examination Hall three unauthorised loose sheets containing information relating to the subject of the question paper which were found by the examiners attached to her answer scripts. She was suspended from sitting any Unit Examination for three years. She appealed against this finding and punishment to the Vice-Chancellor who appointed a sub-committee to hear it. The sub-committee affirmed the findings of the Examination Committee and the punishment imposed. She sought in the Court of Appeal a quashing of these orders by way of certiorari and an order directing release of her results by way of mandamus alleging that natural justice was denied to her and that she had been denied the assistance of legal representation. The Court of Appeal refused her application and from this order she preferred an appeal to the Supreme Court.

Held—

(1) There was no failure to observe the principles of natural justice. The petitioner was made aware of the particulars of the offence she was alleged to have committed and the names of those who had testified against her and the gist of what they had said. She had not sought to cross-examine any of these witnesses. A tribunal like the Examination Committee exercising quasi-judicial functions is not a Court and therefore is not bound to follow the procedure prescribed for actions in courts nor is it bound by strict rules of evidence. It can unlike a Court obtain all information material for the issues under inquiry from all sources and through all channels without being fetterred by rules of procedure. Where its procedure is not regulated by statute, it is free to adopt a procedure of its own, so long as it conforms to principles of natural justice. It is equally free to receive evidence from whatever sources provided it is logically probative. The only obligation which the law casts on the Tribunal is that it should not act on any information which it may receive unless it is put to the party against whom it is to be used and gives him a fair opportunity to explain or refute it. A party who does not want to controvert the testimony gathered behind his back cannot complain that there was no opportunity of cross-examination especially when it was not asked for.

A tribunal can act on hearsay evidence subject to the overriding obligation to provide a fair hearing and a fair chance to exculpate himself and to controvert the evidence against him to the person whose conduct is being inquired into. However there is no requirement of cross-examination to be fulfilled to justify fairplay in action when there was no demand for it.

(2) The petitioner was informed of the material particulars of the charge and there was no substance in the allegation that she did not know the particulars of the charge.

(3) There is no right to legal or other representation but this may be allowed at the discretion of the Tribunal.

Cases referred to:

(1) *Board of Education v. Rice–[1911] A.C. 179, 182.*
(2) *The University of Ceylon v. Fernando–(1960) 61 N.L.R. 505, 513, 515, 519. (P.C.).*
(3) *L. C. B. v. Arlidge–[1915] A.C. 120, 132.*
(4) *Kanda v. Government of Federation of Malaya–[1962] A.C. 322.*
(5) *R. v. Deputy Industrial Injuries Commissioner ex parte Moore–[1965] 1 All E.R. 81, 84, 93.*
(6) *General Medical Council v. Spackman–[1943] A.C. 624, 634.*
(7) *R. v. Hull Prison Board of Visitors–[1979] 3 All E.R. 540, 553.*
(8) *T. A. Miller Ltd. v. Minister of Housing and Local Government–[1968] 2 All E.R. 633; [1968] 1 W.L.R. 922.*
(9) *Kavannah v. Chief Constable of Devon–[1974] 2 All E.R. 697.*
(10) *Fraser v. Mudge–[1975] 3 All E.R. 78.*
(11) *Pett v. Greyhound Racing Association Ltd. No. (2)–[1969] 2 All E.R. 221, 231.*
(12) *Enderby Town Football Club v. Football Association Ltd.–[1971] 1 All E.R. 215, 218.*
(13) *R. v. Secretary of State [1984] 1 All E.R. 799.*

APPEAL from judgment of Court of Appeal reported at [1985] 1 S.L.R. 244.

Dr. H. W. Jayewardene, Q.C. with *L. C. Seneviratne, P.C., Lakshman Perera* and *Miss T. Keenavinna* for petitioner-appellant.

K. N. Choksy, P.C. with *I. S. de Silva, Miss I. R. Rajepakse* and *Miss T. Rodrigo* for respondents-respondents.

Cur. adv. vult.

July 15, 1986.

SHARVANANDA, C.J.

The petitioner-appellant (hereinafter referred to as petitioner) was at all times relevant to this appeal a student of the University of Colombo following the Science (Hons) Degree Course, for a degree in Zoology (Special) in Parasitology. The petitioner sat for the final examination in 1982. The petitioner had sat for Part I and Part II in papers in Parasitology of the Final Examination on the 18th and 21st June 1982. Prior to that the petitioner had sat for the Organic Chemistry C.

203 paper. This was a second year Examination paper. The petitioner had failed in 1980. The result of the papers was given on 7.6.82 and the petitioner was unsuccessful at the examination.

The 1st respondent is the University of Colombo, a body incorporate established under the provisions of sections 21 & 28 of the Universities Act, No. 16 of 1978. The 2nd to 5th respondents are members of the Sub-committee appointed by the Vice-Chancellor of the University to hear the appeal made by the petitioner appellant to the Vice-Chancellor, against the decision and punishment imposed on her by the Examination Committee for an examination offence alleged to have been committed by her in respect of the Chemistry C. 203 paper for which she has sat on 21.4.82. The 6th respondent is the Senior Assistant Registrar (Examinations) in the University of Colombo.

On or about 17th July 1982, the petitioner received a letter dated 16th July 1982 from the 6th respondent requesting the petitioner to meet Dr. O. Jayaratne, Senior Lecturer in Physics, on 21.7.82. The petitioner met Dr. O. Jayaratne on 21.7.82. as requested. Dr. (Mrs) Seneviratne, the Head of the Department of Botany, was also present, Dr. (Mrs) Seneviratne told the petitioner that some papers had been found attached to her answer scripts of the Organic Chemistry C. 203 Examination for which the petitioner had sat on 21st April 1982. The petitioner then denied that any such papers were attached to the answer script. The petitioner was shown the three loose sheets of paper containing notes on Chemistry which were alleged to have been attached to the petitioner's answer script. The petitioner had denied that she had attached those loose papers to the answer script and also denied that those loose sheets of paper were in her handwriting. The petitioner was not shown the answer scripts in question. The petitioner then made a written statement denying she had attached the said three sheets of papers and further that those papers were in her handwriting. This statement was handed over by her to Dr. Jayaratne, and at the request of Dr. (Mrs) Seneviratne, she marked the three sheets of paper X, Y, Z and signed and dated them 21st July 1982 at the top of each of the said sheets of paper. Subsequently on 19th August 1982 the petitioner received the letter dated 17.8.82 (P1) from the Senior Assistant Registrar (Examinations), informing her that she had been found guilty of an examination offence and that the Examination Committee had at its meeting of the 2nd August 1982 decided that her candidature at the April 1982 Unit Examination be

cancelled and that she be debarred from sitting for any Unit Examination for a period of 3 years. By her letter dated 23rd August 1982 (P2) the petitioner appealed to the Vice-Chancellor against the decision of the Examination Committee. In paragraph 7 of this appeal the petitioner stated:

Paragraph 7 –

"When I met Dr. Jayaratne on the 21st July 1982 (Mrs) Seneviratne, the Head of the Department of Botany was also present. Dr. (Mrs) Seneviratne then told me that some papers had been found attached to my answer script of the C. 203 Organic Chemistry Paper. I denied that any such papers were attached to my answer script. I was then shown 3 sheets of papers and I further informed Dr. (Mrs) Seneviratne that these papers were not in my handwriting. At the time these 3 sheets of paper were shown to me they were not attached to my answer scripts. I was not shown my answer scripts. These papers were 3 loose sheets of paper containing some notes of Chemistry."

In this appeal P2, which appears to have been drafted by an Attorney-at-Law, petitioner sets out the following four grounds of appeal, namely:–

(1) She was not given notice of any inquiry that was going to be held against her, nor any notice of a charge, that she had or was alleged to have committed an examination offence;

(2) She was given no adequate opportunity of being heard or properly presenting a case against any charge;

(3) The decision of the Examination Committee was arbitrary and unilateral and contrary to all principles of fairness.

(4) The decision of the Examination Committee is contrary to facts and law.

By P2 she prayed that the decision of the Examination Committee contained in letter dated 17th August 1982 (P1) be quashed.

By letter dated 19th November 1982 (P4) the petitioner was informed by the 6th respondent that the inquiry into her appeal would be heard by the Board of Appeal appointed by the Vice-Chancellor on the 25th November 1982. Though the petitioner has not chosen to disclose what happened at this inquiry, the respondents have in

paragraph 9 of their Statement of Objection set out what happened at the inquiry, as follows:

> "..... The said Committee granted the petitioner an opportunity of being heard in support of her appeal on 25.11.82 and she was also shown her answer books consisting of three books (Index No. NS1811) despite same is not normally shown to candidates, and also the said three sheets marked 'X', 'Y' and 'Z'. The petitioner was asked by the Committee whether she had any further or other material or evidence to place before the Committee, but the petitioner had none."

Thereafter by letter dated 18th April 1983, (P7) the Vice-Chancellor informed the petitioner that the Report of the Sub-committee appointed by him to consider her appeal against the decision of the Examination Committee was considered by the Committee on the 6th April 1983 and that the Committee after careful consideration of the Report and the petitioner's submissions agreed that she was guilty of an Examination offence and recommended that the punishment referred to in letter dated 17.8.1982 (P1) should stand.

The petitioner then preferred an application to the Court of Appeal to grant and issue an order in the nature of Writ of Certiorari quashing the decision of the Examination Committee contained in the letter dated 18th April 1983 (P7) and also for a Writ of Mandamus directing the respondents to release the results of the petitioner in respect of the final examination in Parasitology 1982.

The grounds urged in her application for the grant of Writ are as follows:—

(*a*) that the petitioner was not served with any charge sheet at any time relating to the particular offence which the petitioner was accused of committing;

(*b*) the evidence at the said inquiries against the petitioner was not led in the presence of the petitioner, nor was the petitioner provided with the copies of the proceedings before the aforesaid Committee conducting the inquiries referred to above;

(*c*) the petitioner was questioned by Dr. (Mrs) Seneviratne and the members of the Sub-committee as stated above but was not made aware of the evidence against the petitioner though the petitioner requested to be informed of such evidence;

(*d*) the petitioner asked the Sub-committee at the second inquiry whether the petitioner could be represented by another person at the said inquiry but the Sub-committee decided that it was not necessary at this stage for the petitioner to be represented at the inquiry;

(*e*) the petitioner had no opporunity of meeting the evidence against the petitioner;

(*f*) the petitioner was not given a proper or adequate opportunity of presenting the petitioner's case before either the Examination Committee or the Sub-committee which heard the petitioner's appeal.

The respondents denied the allegations of the petitioner and among others the Vice-Chancellor, Dr. Jayaratne and Dr. (Mrs) Seneviratne, the sixth respondent and Professor Kannangara who was the supervisor at the petitioner's examination on 21st April 1982 filed affidavits in support of the objections to petitioner's application.

In their joint affidavits dated 25.1.84 Dr. Jayaratne and Dr. (Mrs) Seneviratne state that–

"The petitioner presented herself at an inquiry before us on 21st July 1982 whereat she was shown the three sheets of paper which were found tied up with her answer books, and she was informed of the charge and the evidence against her and given every opportunity of meeting same and presenting her position. The inquiry was conducted by us in the manner set out in paragraphs 5(*b*) to (i) and 10(i) and (ii) of the Statement of Objections."

It is stated in the said paragraph 5(*b*)–

"Dr. (Mrs) Seneviratne informed the petitioner that the three sheets of paper (subsequently marked as 'X', 'Y' and 'Z') and containing notes on Chemistry were found tied up to her answer books and that accordingly Dr. Jayaratne and herself had been requested by the Vice-Chancellor to inquire into and report whether the petitioner had committed an examination offence by bringing into the Examination Hall unauthorised material."

Para 5(*e*) "The petitioner was informed by Dr. Jayaratne and Dr. (Mrs.) Seneviratne that they had questioned the Examiners who stated that the said three sheets were found tied up with her answer books."

Para 5(*f*) "The petitioner was also informed that the Supervisor (Prof. M. L. T. Kannangara) and the Invigilators (Dr. S. Hettiarachchi, Dr. A. N. Abeywickrema and Dr. R. Abeysundera) had been interviewed and had stated that no loose sheets were issued to candidates and that only complete books of eight pages initialled by the Supervisor and containing the date stamp had been issued to candidates both originally and also for continuation."

Para 5(*g*) "It was pointed out to the petitioner that the said three sheets were not part of a complete book, but were loose sheets, and were University stationery. It was also pointed out to her that the date stamp on the said three sheets bore the date 19th August 1981 on which date she had sat another course Unit Examination Z.305 at the University.

Para 5(*h*) "The petitioner's attention was called to the fact that there were clear fold marks on the said sheets 'X', 'Y' and 'Z', further that the Supervisor had announced at the end of the Examination that all answer books of each candidate be tied together, and that the invigilators had confirmed that they had gone round the Hall to ensure that this was done by all candidates."

Para 5(*i*) "The petitioner was questioned as to whether she could offer any explanation as to how or why or by whom the said three sheets came to be tied up with her answer books in view of procedures followed both during and after the Examination to ensure that answer books do not get into unauthorised hands or that unauthorised persons do not have access to the same, but she was unable to offer any explanation."

In *Para 10* it is stated–

"(i) that the petitioner was informed of the charge against her and was at all times aware of the same.

(ii) The petitioner was made aware of the aforesaid material gathered by Prof. Jayaratne and Dr. (Mrs) Seneviratne from the examiners, supervisors and invigilators and given the opportunity of meeting or explaining the same and presenting her case. The relevant procedures were also brought to the notice of the petitioner."

Professor Kannangara of the University of Colombo has in his affidavit stated as follows–

"1. I was the Supervisor in charge of the Course Unit Examination C 203 held by the University of Colombo, whereat the petitioner sat for the Organic Chemistry paper on 21st April 1982.

2. I have perused the Statement of Objections of the first respondent and the other respondents filed in these proceedings and I affirm to the correctness of the same. With particular reference to paragraph 5(*f*) of the said Statement of Objections, I state that I only issued to candidates compiete books of eight pages each bearing the date stamp 21st April 1982 and initialled by me, both initially and for continuation. No loose sheets were issued at this examination.

3. I state that at the end of the examination, I instructed all candidates to tie up their answer books together and hand them over to the invigilators.

4. The invigilators went round the Hall to ensure that this was done by candidates...."

In her affidavit dated 21.4.84, the 6th respondent has stated as follows:

..."3. I state that the petitioner sat for the Organic Chemistry Paper at the Course Unit Examination Z.305 held on 19th August 1981 at which examination candidates were issued with loose sheets of paper which bore the University date stamp 19th August 1981...."

Dr. Jayaratne and Dr. (Mrs) Seneviratne have appended to their affidavit their Report 'R1' which they forwarded at the conclusion of the Inquiry to the Vice-Chancellor. This Report is dated 28th July 1982, long before the present proceedings. This Report 'R1' throws lot of light on the issues arising in this case. It contains a clear analysis of the evidence and probabilities. It is a very fair and exhaustive Report which has considered the case for and against the petitioner very fully. It gives the lie to the averments of the petitioner that she was not given a fair hearing. This Report reads as follows:

REPORT OF THE COMMITTEE OF INQUIRY APPOINTED BY THE VICE-CHANCELLOR TO REPORT ON ALLEGED EXAMINATION OFFENCES COMMITTED BY CANDIDATES Nos. S. 256 AND NS. 1811 AT THE COURSE UNIT EXAMINATION C 203 (FACULTY OF SCIENCE) HELD ON 21st APRIL 1982

(1) By letter dated June 28, 1982 the Vice-Chancellor appointed us – Dr. A. S. Seneviratne (Head/Botany) and Dr. O. W. Jayaratne – to inquire into the alleged offences mentioned above and to submit a report of our findings to the Examinations Committee of the University of Colombo (Annex A).

(2) This step was taken on the basis of a letter dated June 25, 1982, addressed to the Head/Chemistry by the four examiners who set and marked the paper C. 203 (Organic Chemistry). These examiners were Prof. M. Mahendran, Dr. L. M. V. Tillekeratne, Dr. A. P. de Silva and Dr. D. M. R. S. Abeywickrema, all of the Chemistry Department (Annex B).

(3) On our request the SAR/Examinations supplied us in wiriting with the following information pertaining to examination C 203 (Annex C):–

(a) Place and date of examination: K. G. Hall, April 21, 1982.

(b) Supervisor: Prof. M. L. T. Kannangara.

(c) Invigilators: (1) Dr. L. M. V. Tillekeratne – Chemistry
(2) Dr. S. Hettiarachchi – Chemistry
(3) Dr. A. N. Abeywickrema – Chemistry
(4) Dr. R. Abeywickrema – Chemistry

(d) Hall Attendant: Mr. M. Somasiri.

(4) The letter addressed to the Head/Chemistry (Annex B) by the four Chemistry staff members claimed that the answer scripts of candidates S 256 and NS1811 in the Course Unit Examination C 203 held on April 21, 1982, "included some sheets with date seals different from that of the examination date."

(5) We obtained the scripts referred to from the SAR/Examinations (on the advice of the Dean/Science) and studied them carefully. We also interviewed the following:

(a) Prof. M. Mahendran, Drs. L. M. V. Tillekeratne, A. P. de Silva and D. M. R. S. Abeywickrema (Examiners).

(b) Prof. M. L. T. Kannangara (Supervisor).

(c) Drs. S. Hettiarachchi, A. N. Abeywickrema and R. Abeywickrema (Invigilators).

Dr. Tillekeratne, though invited to be an invigilator, had been excused from that duty on his request.

(d) The candidates (No. S 256 and NS 1811) who are alleged to have committed the examination offence.

(6) Our findings are as follows:

Candidate No. S. 256–(Mr. M. A. S. D. Upali)

(*a*) The last sheet of his script was a loose one, tied to the rest of the answer script. It was date stamped 31 December, 1981.

(*b*) Several Organic Chemistry reactions and formulae were written on both sides of the last sheet.

(*c*) The evidence of the examiners, who were interviewed individually indicated that most of the material on this sheet had no direct relevance to the questions in paper C 203, although, here and there some indirect connection might be detected.

(*d*) On 31 December 1981, candidate S 256 had sat the paper AM 103 (see Annex C). This information was given by the SAR/Examinations and subsequently confirmed by the candidate himself.

In other words candidate S 256 had the opportunity of removing from the examination hall blank sheets bearing the seal "31 Dec. 1981."

(*e*) The Supervisor Prof. M. L. T. Kannangara, testified to the fact that even before Faculty instructions had been given he had insisted as supervisor, that no loose sheets were to be given to candidates–only complete books of 8 pages. The candidates were told that these books should be returned intact.

These instructions were endorsed by the invigilators in their evidence to us.

(*f*) The Supervisor had initialled the cover of every answer book issued. However, the loose sheet at the end–contrary to instructions and with a different date stamp–bore no such initials. Prof. Kannangara, on being interviewed stated and certified on this sheet that it was not issued with his instructions. (Please see script of S. 256 attached hereto).

(*g*) The first set of books was laid on the tables, after the Supervisor had intialled them and the date stamps impressed upon them, by the Hall attendant. All subsequent answer books were also initialled on their cover by the Supervisor, and issued to candidates on request only by the invigilators.

(*h*) Immediately the examination was over, the Supervisor sternly warned candidates that every scrap of paper in their possession–barring identity cards and admission cards–must be tied to the answer scripts. The invigilators went round the Hall and kept an eye on candidates to make sure that this order was carried out.

(*i*) There are clear fold marks on the last page submitted by S 256 – indicating that this page was probably brought into the Hall, perhaps enclosed in the envelop containing the admission card.

(j) The case of candidate S 256 became clear when we interviewed him. On being confronted with the evidence, he unhesitatingly admitted that:

(i) he had brought the paper in question into the examination hall, and

(ii) had tied it up with the main answer script (Annex D signed by candidate. S 256).

(7) *Candidate No. NS 1811* – (Miss D. L. C. de Silva – the petitioner in this case).

(a) The main observations regarding the previous candidate apply in this case too. The Supervisor has again certified on the loose sheets attached to the end of the answer script that they were not issued with his authorisation.

(b) This candidate had *three* loose sheets tied to her answer script, which contained various organic chemistry reactions and formulae, which the examiners claimed had no direct relevance to the questions set.

(c) These three sheets were date stamped "19 August 1981".

(d) From the information supplied by the SAR/Examinations, this candidate had set the Course Unit Examination Z 305 held on 19 August 1981 (Annex C). Therefore, she had the opportunity of removing loose sheets on that occasion with the date stamp 19th August 1981.

(e) As in the case of the previous candidate, there were clear fold marks on the three loose sheets attached at the end of the answer script.

(f) When confronted with the evidence however, this candidate stated:

(i) that the handwriting on the last three loose sheets was *not* hers, and

(ii) that she had *not* attached the said papers to her answer script.

She is a 4th year Zoology (Special) student. She expressed shock that such an allegation could be made about her and insisted that it was not in her character to do so.

We made every effort to convince her that if she told us the truth there might be mitigating circumstances which the Examinations Committee might perhaps consider in making its final decision.

We also pointed out to her that the three last pages could have been tied to her answer script only by (i) herself, (ii) an invigilator (iii) the Supervisor or (iv) the examiners. No one else could have had access to the papers since they were packeted and sealed under the watchful eye of the Supervisor, and the seals were intact when the examiners took charge of the packet.

However, she insisted on her denials. Accordingly, we asked her to give us a written statement which is attached hereto (Annex E).

(g) We have observed certain similarities between the main answer script and the last three pages in respect of the following letters: H, d. N, B, a. p.

Conclusions and Recommendations

(1) *Candidate S 256:*

We feel it is proven beyond doubt that this candidate did bring a sheet containing organic chemistry reactions and formulae to the examination hall. This is confirmed by his own written admission (Annex D).

However, in view of his honest and prompt admission of guilt, we recommend that, in making a decision the Examinations Committee should keep this fact in mind.

(2) *Candidate NS 1811:*

Two questions arise in respect of this candidate:

(*a*) Who was responsible for tying the last three pages which have no direct relevance to the questions in C 203 and which also have clear fold marks—to the main answer script?

These three pages bear no index numbers and we cannot imagine that any members of the science academic staff, even if he or she discovered them lying on a table, would have tied them to a particular script without the knowledge of the candidate or the Supervisor.

(*b*) Is the handwriting on the last three loose papers the same as that on the main answer script? We have already referred to certain similarities in handwriting.

However, we are not handwriting experts, accordingly, we recommend that before taking any action, punitive or otherwise, the Examinations Committee should refer these papers, along with the main answer script, to a handwriting expert for his opinion.

If there is a difference between the handwriting on the loose sheets and the main answer script, we would like to point out that there is just a possibility that someone else may have been induced to write the material on the loose sheets.

General Comment

We would like to stress that these irregularities would never have come to light but for the extreme strictness of the supervisor and his team of invigilators, as well as the sense of duty displayed by the examiners. We wish to commend them.

Sgd. Dr. A. S. Seneviratne.

Sgd. Dr. O. W. Jayaratne.

University of Colombo,
Colombo 3.
28th July, 1982."

As recommended by the Report 'R1', the opinion of the handwriting expert was obtained. But in that report the handwriting expert was not in a position to give a definite opinion, whether these loose sheets 'X', 'Y' and 'Z' were in the handwriting of the petitioner or not.

The respondents averred that in view of the inability of the handwriting expert to give a definite view whether documents 'X', 'Y' and 'Z' were in the handwriting of the petitioner, the handwriting was not a matter taken into account against the petitioner. But they stated that possession of unauthorised material by a candidate in an Examination Hall constitutes by itself an offence, in whosoever's handwriting or otherwise the same may be.

The Report 'R1' was not faulted by the petitioner and no allegation was made by the petitioner that any of the witnesses who were interviewed by Dr. Jayaratne and Dr. (Mrs) Seneviratne and whose evidence was the basis of the Report 'R1', were animated by any bias or mala fides against the petitioner. According to that Report, when the petitioner was confronted with the evidence against her, her only response was that she did not attach the said papers to her answer script.

The Court of Appeal by its judgment dated 10.5.85, refused the petitioner's application for a writ with costs fixed at Rs. 250. The petitioner has now preferred this appeal to this court.

A tribunal like the Examination Committee exercising quasi-judicial functions is not a court and therefore is not bound to follow the procedure prescribed for actions in courts nor is it bound by strict rules of evidence. It can, unlike a court obtain all information material for the issues under inquiry from all sources and through all channels, without being fettered by rules of procedure which govern proceedings in courts. Where its procedure is not regulated by statute, it is free to adopt a procedure of its own, so long as it conforms to principles of natural justice. It is equally free to receive evidence from whatever source provided it is logically probative. The only obligation which the law casts on it is that it should not act on any information which it may receive unless it is put to the party against whom it is to be used and give him a fair opportunity to explain or refute it.

In his submission before us counsel for the petitioner said that the petitioner was not told who was the examiner who found those loose sheets tied to the answer script. According to Dr. Jayaratne and Dr. (Mrs) Seneviratne, the petitioner was told that all the examiners had

stated that the three sheets were found tied with her answer books and that she was questioned as to whether she could offer any explanation as to how or why or by whom the said three sheets came to be tied up with her answer books in view of the procedure followed both during and after the examination to ensure that answer books do not get into unauthorised hands, but she was unable to offer any explanation. The petitioner in the affidavit omits to refer to the fact that she was told by Dr. Jayaratne and Dr. (Mrs) Seneviratne, that the examiners had stated that the three sheets were found tied up with her answer books. The petitioner had not filed any counter-affidavit denying this averment made by Dr. Jayaratne and Dr. (Mrs) Seneviratne. It is clear that the petitioner was communicated the gist of what had been gathered in her absence; even then, she did not ask for any opportunity to cross-examine the witnesses regarding the truthfulness of the material that was gathered against her nor on the credibility of the persons who had given evidence. A party who does not want to controvert the testimony gathered behind his back cannot complain that there was no opportunity of cross-examination specially when it was not asked for. It is to be noted that even in her appeal (P2) to the Vice-Chancellor, she had not stated that the statement made by the examiners was untrue nor asked that she be given an opportunity to demonstrate the untruth or to cross-examine them.

The generality of application of the audi alteram partem maxim and its flexibility in operation were brought out by Lord Loreburn, L.C. in *Board of Education v. Rice* (1):

> "In such a case the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and listen fairly to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view."

The House of Lords enunciated the above legal principle in a case where it had to decide whether the Board of Education had properly determined a dispute between a body of school managers and the Local Education Authority.

Lord Jenkins' delivering the judgment of the Privy Council in *The University of Ceylon v. Fernando* (2) stated at page 513–

"It appeared to Their Lordships that Lord Loreburn's much quoted statement in *Board of Education v. Rice (supra)* still affords as good a general definition as any of the nature of and limits upon the requirements of natural justice in this kind of case. Its effect is conveniently stated in this passage from the speech of Lord Haldane in the case of *L. C. B. v. Arlidge* (3) where he cites it with approval in the following words:

'I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In *Board of Education v. Rice*, he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on everyone who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The Board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view.'"

In *Kanda v. Government of Federation of Malaya* (4) the failure to supply the appellant with a copy of the Report of the Board of Inquiry, which contained matter highly prejudicial to him and which had been sent to and read by the adjudicating officer before he sat to inquire into the charge was held by the Privy Council to have amounted to a failure to afford the appellant "a reasonable opportunity of being heard in answer to the charge." Delivering the judgment of the Judicial Committee Lord Denning said:

"If the right to be heard is a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements had been made affecting him; and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn, L.C., in *Board of Education v. Rice*, down to the decision of their Lordships Board in *Ceylon University v. Fernando*. It follows of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other."

The rules of natural justice are a compendious reference to those rules of procedure which the common law requires persons who exercise quasi-judicial functions to observe *(R v. Deputy Industrial Injuries Commissioner ex parte Moore)* (5). Natural justice requires that the procedure before any tribunal which is acting judicially shall be fair in all the circumstances and that the tribunal must base its decision on evidence. But such evidence need not be restricted to that which would be admissible in a court of law. Viscount Simon, L.C., in *General Medical Council v. Spackman* (6) considered that there was no such restriction. That was also clearly the view of the Privy Council in *University of Ceylon v. Fernando (supra).*

The matter was dealt with in more detail by Diplock, L.J., in *R. v. Deputy Industrial Injuries Commissioner ex parte Moore (supra)* at page 84 as follows:

> "... those technical rules of evidence, however form no part of the rules of natural justice. The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than that it must be based on material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer; but he may take into account any material which, as a matter of reason, has some probative value in the sense mentioned above. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue. The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his."

However, this power of the tribunal to admit hearsay evidence is subject to the overriding obligation to provide a fair hearing to the person whose conduct is in question; depending on the facts of the particular case and the nature of the hearsay evidence, the obligation to give the person charged a fair chance to exculpate himself or fair opportunity to controvert the charge may oblige the tribunal not only to inform that person of the hearsay evidence, but also give the accused a sufficient opportunity to deal with that evidence. In the words of Geoffrey Lane, L.J., in *R. v. Hull Prison Board of Visitors* (7)–

"Depending on the nature of that evidence and the particular circumstances of the case, a sufficient opportunity to deal with the hearsay evidence may well involve the cross-examination of the witness whose evidence is initially before the board in the form of hearsay."

Lane, L.J. further said that:

"Where a prisoner desires to dispute the hearsay evidence and for this purpose to question the witness, and where it is not possible to arrange for his attendance, the board should refuse to admit that evidence or if it has already come to their notice, should expressly dismiss it from their consideration."

In *T. A. Miller Ltd. v. Minister of Housing and Local Government* (8) the tribunal acted on a letter written by a person who did not attend the inquiry, the statements in which were relevant and were put to the witnesses who contradicted them. The Court of Appeal, saying that it was not contrary to natural justice to admit it, held that the tribunal was entitled to rely on the latter if they thought fit. Lord Denning said at page 634 that–

"Hearsay is clearly admissible before a tribunal. No doubt in admitting it, the tribunal must observe the rules of natural justice, but this does not mean that it must be tested by cross-examination. It only means that the tribunal must give the other side a fair opportunity of commenting on it and of contradicting it."

This view of the law was re-affirmed in *Kavannah v. Chief Constable of Devon* (9).

In the case of the *University of Ceylon v. Fernando (supra)* the plaintiff's contention to the effect that he was not adequately informed of the case he had to meet and was not given any adequate opportunity of meeting it and that the course taken by the Vice-Chancellor or the Commission of Inquiry in these respects failed to satisfy the requirements of natural justice depended almost entirely on the admitted fact that the witnesses who deposed against him and on whose evidence the Commission acted and based its decision, were not questioned in the presence and hearing of the plaintiff who consequently was not able to question them on the statements they made. Their Lordships held that this did not in itself involve any violation of the requirements of natural justice. They observed that it was open to the Vice-Chancellor if he thought fit to question witnesses without inviting the plaintiff to be present, but that before he reached

any decision to report the plaintiff, he should have given the plaintiff a fair opportunity to correct or contradict any relevant statement to his prejudice. With respect to the contention of the plaintiff that he was not given adequate opportunity of meeting the case against him and that the requirements of natural justice were not complied with, on the ground that he was given no opportunity of questioning Miss B. the one essential witness against the plaintiff, since the proof of the charge against the plaintiff rested on her word against his, the Privy Council commented–

> "In Their Lordships' view this might have been a more formidable objection if the plaintiff had asked to be allowed to question Miss B and his request had been refused. But he never made any such request."

In the instant case too, the petitioner did not make any request to cross-examine the examiners who found those loose sheets tied to the answer script and the other witnesses. The petitioner had no reason to suppose that such a request would not have been granted. In a similar situation in the *University case (supra)* the Privy Council observed at page 519:

> "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 wish to question Miss B or 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."

A party who does not want to controvert the veracity of the evidence or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for. There is no requirement of cross-examination to be fulfilled to justify fairplay in action, when there was no demand for it. Counsel for petitioner then stated that she was not told who was the particular examiner who found those loose sheets of papers tied to her answer script and hence she was not in a position to decide as to who was to be

cross-examined. But the fact is she was made aware by Dr. Jayaratne and Dr. (Mrs.) Seneviratne that "the *examiners* had stated that the said three sheets were found tied up with her answer books." The petitioner could then have requested that the said examiners be made available for her cross-examination; no valid excuse existed for petitioner for failing to do so. With respect to the other complaint that the petitioner was not told who were the other witnesses who testified against her, there is no factual basis for it. According to the affidavit of Dr. Jayaratne and Dr. (Mrs) Seneviratne, it would appear that the petitioner was informed who they were. In my view cross-examination of those witnesses by the petitioner was designedly refrained from.

The petitioner bewails that she was prejudiced by the fact that she was not told what was the offence which she had committed. It is unbelievable that the petitioner who is following a Graduates' Course in the University did not know the nature of the offence that she was supposed to have committed when she was charged with having brought into the Examination Hall unauthorised material. A primary school student knows that it is an offence to carry to the Examination Hall any notes or other unauthorised material. That the petitioner could not spell any examination offence in the allegation made against her does no credit to her intelligence or to her veracity. There is absolutely no merit in this contention. The allegation contained all the indicia of an examination offence.

Counsel for the petitioner pressed on us that the petitioner had asked the sub-committee to be allowed to be represented at the inquiry by another person and that the sub-committee had wrongfully decided that it was not necessary at that stage for the petitioner to be represented at the inquiry.

A University student appearing before an Examination Committee on a charge of having committed an examination offence is not entitled as of right to have legal representation or the assistance of a friend or advisor. But the Committee may, in its discretion, allow the student to avail himself of such assistance. I am unable to accept the argument that natural justice demands that in the case of inquiries conducted by a domestic tribunal like the Examination Committee against an erring student, the student should be allowed to be represented by any other person. Generally, the issues at such

inquiries are simple and involve straightforward questions of fact and the student is quite competent to handle them. In *Frazer v. Mudge* (10) the Court of Appeal in England held that a prisoner is not entitled, as of right, to be legally represented before a Board of Visitors, Roskill, L.J., said in that case at page 80:

> "It seems to me that the requirements of natural justice do not make it necessary that a person against whom disciplinary proceedings are pending should as of right be entitled to be represented by solicitors or counsel or both."

In *Pett v. Greyhound Racing Association Ltd. (No. 2)* (11) Lyell, J. said:

> "I find it difficult to say that legal representation before a tribunal is an elementary feature of the fair dispensation of justice."

Lord Denning in *Enderby Town Football Club v. Football Association Ltd.* (12) said:

> "Is a party who is charged before a domestic tribunal entitled as of right to be legally represented? Much depends on what the rules say about it. When the rules say nothing, then the party who has no absolute right to be legally represented. It is a matter for the descretion of the tribunal. They are masters of their own procedure; and if they in the proper exercise of their discretion, decline to allow legal representation, the courts will not interfere."

In *R v. Secretary of State* (13) which was a case where the applicants were convicted prisoners who were charged before the Prison Board of Visitors with grave offences against prison discipline, the court re-affirmed that although a prisoner appearing before a board of visitors in a disciplinary charge was not entitled as of right to have legal representation or the assistance of a friend or advisor, as a matter of natural justice, a board of visitors had a discretion to allow such representation or assistance before it. The court spelt the considerations that should be taken into account in exercising the discretion.

> "When exercising the discretion to allow legal representation or the assistance of a friend or advisor, a board of visitors should first bear in mind the overriding obligation under Rule 49 (2) of the 1964

rules 'to ensure that a prisoner is given a full opportunity...of presenting his...case' and also take into account, inter alia (1) the seriousness of the charge and the potential penalty (2) whether any points of law are likely to arise (3) a prisoner's capacity to present his own case (4) procedural difficulties arising from the fact that a prisoner awaiting adjudication before a board is normally kept apart from other prisoners and may therefore be inhibited in the preparation of his defence, and the difficulty for some prisoners of cross-examining witnesses particularly expert witnesses (5) the need for reasonable speed in making an adjudication, (6) the need for fairness as between persons or as between prisoners and prison-officers."

The petitioner, in this case did not suffer the grave handicaps or disadvantages which an illiterate prisoner is under, when charged with grave offences under the prison rules. Her capacity to present her own case was not put in issue before the Committee when application was made by her that she be allowed representation. In this context, it is relevant to note that the petitioner never asked for any representation at the first inquiry before Dr. Jayaratne and Dr. (Mrs.) Seneviratne. In the circumstances of the case it cannot be said that the 2nd to 6th respondents acted unreasonably in declining in the exercise of their discretion, to accede to the petitioner's request for representation. The petitioner suffered no prejudice by their refusal.

In my view, the respondents have not committed any infringement of the rules of natural justice. The finding against the petitioner was reached after the petitioner was accorded a fair hearing and after a careful and fair consideration of all the facts and probabilities of the case.

The appeal is dismissed with costs.

COLIN-THOMÉ, J. – I agree.

ATUKORALE, J. – I agree.

Appeal dismissed.