CULASUBADHRA
v.
THE UNIVERSITY OF COLOMBO AND OTHERS

COURT OF APPEAL.
SENEVIRATNE, J. (PRESIDENT, COURT OF APPEAL) AND B. E. DE SILVA, J.
C. A. 851/83.
OCTOBER 30, 31, 1984 AND NOVEMBER 1, 26, 27 AND 28, 1984.

Writs of certiorari and mandamus – Examination Rules – Examination offence – Can candidate at examination be said to be found in possession of loose written sheets later found attached to answer scripts ?– Review of finding of fact by Tribunal at disciplinary inquiry – Right to be informed of the charge and evidence – Natural justice – Fair hearing – Right of representation at inquiry before a domestic tribunal – Can grounds not set out in the petition be raised at the hearing ?

The petitioner, a final year student of the University of Colombo sat the Final Examination conducted by the University in 1982. On 21.04.1982 she answered the paper in Organic Chemistry C 203 but to her answer script the correcting Examiners found attached three loose sheets on which there were notes on Chemistry. On being requested to do so by the Assistant Registrar/Examinations the petitioner appeared before an Examinations Committee on 21.07.1982 whereat she was informed of the discovery of the three loose sheets tied up with her answer book and shown them. On the loose sheets there was the date stamp 19.08.1981 on which date she had sat for another Course Unit Examination at the University. The three sheets were University stationery. The petitioner denied that she attached the loose sheets to her answer book and also asserted the notes written on them were not in her handwriting. Subsequently the petitioner was served with a letter dated 17.08.1982 (P1) by the Assistant Registrar/Examinations informing her of the decision of the Eaminations committee that she had been found guilty of an examination offence and that her candidature at the April 1982 Unit Examination was cancelled and she was debarred from sitting any Unit Examination for a period of three years. The petitioner appealed to the Vice-Chancellor against the decision of the Examinations Committee. The Vice-Chancellor referred this to a Sub-Committee which considered the appeal after hearing the petitioner and affirmed the decision of the Examinations Committee. This fact was conveyed by the Vice-Chacellor's letter dated 18.04.1983 (P7) to the petitioner who then filed the present application to have the decision conveyed by P7 quashed, and her results released on the following grounds :

(1) The principles of natural justice were not observed and no fair hearing was held because :

(a) No notice of the inquiry and no notice of the charge were given to the petitioner by the Examinations Committee.

(b) The evidence was not led in her presence nor was she given a copy of the evidence and she had no opportunity to meet such evidence or present her case before the Examinations Committee.

(c) No representation was permitted by the Sub-Committee though this was applied for.

(d) No report from the Examiner of Questioned Documents was obtained although the Examinations Committee had said such a report would be obtained.

(2) The petitioner was not found in possession of the unauthorised material.

(3) The Vice-Chancellor had no power to delegate his powers to a Sub-Committee and the full Sub-Committee did not sit to hear the appeal.

Held –

(1) There was no contravention of the principles of natural justice or the requirement of a fair hearing :

(a) The petitioner had been informed of the charge and the evidence against her by the Examinations Committee and given an opportunity to meet the charge but she had no explanation to offer beyond denial and disowning the handwriting on the loose sheets.

(b) In the absence of rules a domestic tribunal has the discretion to allow or refuse representation. Such discretion however must be properly exercised. The accused person has no right to representation unless the rules grant it.

(c) Where there are no rules governing domestic disciplinary inquiries the inquiring Tribunal must adopt such procedure as would ensure a fair hearing. Unduly strict standards should not be applied where it is an academic authority that has held the domestic disciplinary inquiry. It is sufficient if the proceedings have been substaintially fair.

(d) For the proof of the offence in this case it was not necessary that the notes should have been in the handwriting of the petitioner. Further a conclusive report could not be obtained from the Examiner of Questioned Documents because the comparison material supplied by the petitioner was not adequate.

(2) The words "found in possession" in relation to the possession of unauthorised material in Rule 2(i), (ii) and (iii) of the Rules for Examination Offences must be given an extended meaning. It is not necessary that the candidate should be detected in physical possession of the unauthorised material at the examination. Evidence supporting a reasonable conclusion or inference of possession of unauthorised material at the examination is sufficient.

(3) A finding of fact by a Tribunal can be set aside by way of a writ only if it is found that there was no evidence at all to base such a finding or if the Tribunal has not properly directed itself in evaluating the evidence and drawing necessary inferences and could not have come to that conclusion if it properly directed itself.

(4) The objections that the Vice-Chancellor has no power to delegate his disciplinary powers and that the full Sub-Committee appointed to hear the appeal did not hear it were not pleaded and cannot be raised at the hearing. Further the second objection was factually not correct.

Cases referred to :

(1) *University of Ceylon v. Fernando (Privy Council) (1960) 61 NLR 505.*
(2) *Dorothy de Silva v. City Vice Squad (1977) 78 NLR 553.*
(3) *Karamjit Kaur v. Punjab University 57 AIR 1964 Punjab 327.*
(4) *Russell v. Duke of Norfolk [1949] 1 A 11 ER 109, 118.*
(5) *General Medical Council v. Spackman [1943] AC 627, 638.*
(6) *Board of Education v. Rice [1911] AC 179, 182.*
(7) *De Verteuil v. Knaggs [1918] AC 557, 560.*
(8) *Sarath Nanayakkara v. University of Peradeniya and Others C. A. Application No. 987/83 – C.A. Minutes of 02.04.1985.*
(9) *Pett v. Greyhound Racing Association Ltd. [1969] 2 All ER 221.*
(10) *Enderby Town Football Club Ltd. v. The Foodball Association Ltd. and Another [1971] 1 All ER 215 ; [1971] Ch. 591.*
(11) *R. V. Secretary of State for the Home Department and others ex parte Tarrant and Another ; R. K. Wormwood Scrubs Prison Board of Visitors, ex parte Anderson and Others. [1984] 1 All ER 799.*
(12) *T. Jayalingam v. University of Ceylon – C.A. 415/81 C.A. Minutes of 14.08.1981.*
(13) *Carron v. Land Reform Commission C.A. 744/81 – C.A. Minutes of 16.08.84.*
(14) *Paul v. Wijerama (1972) 75 NLR 361.*
(15) *Wijerama v. Paul (1973) 76 NLR 241.*

APPLICATION for Writs of Certiorari and Mandamus.

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

K. N. Choksy, P.C. with *I. S. de Silva, Miss I. R. Rajepakse,* and *Miss H. Wimaladasa* for 1st to 6th respondents.

Cur. adv. vult.

May 10, 1985.

SENEVIRATNE, J. (President)

The petitioner was at the times relevant to the subject matter of this application a student of the University of Colombo following a Science (Honours) Degree Course, for a degree in Zoology (Special) in Parasitology. The petitioner sat for the Final Examination in 1982 and in fact sat for the Part I and Part II papers in Parasitology of the Final Examination on the 18th and 21st June, 1982. Prior to that on 21.4.82 the petitioner sat for the Organic Chemistry C. 203 paper. This was a second year examination paper which the petitioner had failed in 1980. The results of this paper were given out on 7.6.1982, and the petitioner was unsuccessful in this examination.

The 1st respondent University of Colombo is a body corporate established under the provisions of sections 21 and 28 of the Universities Act No. 16 of 1978. 2nd to 5th respondents were members of a Sub-Committee appointed by the Vice-Chancellor to hear an appeal made by this petitioner to the Vice-Chancellor, in respect of punishment imposed on her by the Examinations Committee for an examination offence, alleged to have been committed by her in respect of the Chemistry C. 203 paper for which she sat on 21.4.1982. The 2nd respondent did not participate in the hearing of this appeal. The 6th respondent is the Senior Assistant Registrar, Examinations of the University of Colombo. This is an application to quash by way of a Writ of Certiorari the imposition of a punishment on the petitioner by the Examinations Committee contained in letter dated 18.4.83 (P 7) having rejected her appeal and for a consequential order of Mandamus.

The petitioner has stated that on 17.7.1982, she received a letter dated 16.7.1982 from the Senior Assistant Registrar/Examinations requesting her to meet Dr. C. Jayaratne, Senior Lecturer in Physics on the 21st July 1982. (It has later transpired that on 21.7.82 Dr. Jayaratne took back the letter dated 16.7.1982 from the petitioner. Neither party has revealed the contents of this letter dated 16.7.1982, and also the 1st respondent has not at least revealed why this letter was taken back from the petitioner). The petitioner had as requested met Dr. Jayaratne on 21.7.1982, and there was along with him Dr. (Mrs.) Seneviratne, the Head of the Department of Botany. The petitioner has affirmed that when she met both of them on this day, Dr. (Mrs.) Seneviratne informed the petitioner that some papers had been found attached to her answer script of the Organic Chemistry C. 203 examination for which the petitionr had sat on 21.4.1982. 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 denied that she attached these loose papers to the answer script, and also denied that these loose sheets of paper were in her handwriting. The petitioner was not shown the answer script in question. The petitioner then made a written statement denying that the petitioner attached the said three sheets of paper and further denied that these papers were in the handwriting of the petitioner. Subsequently the petitioner received a letter dated 17.8.1982 (P 1) from the Senior Assistant Registrar/ Examinations informing her that she had been found guilty

of an examination offence by the Examinations Committee, and that the Committee had decided that her candidature at the April 1982 Unit Examination be cancelled and to debar her from sitting for any Unit Examination for a period of three years. (i.e. she could sit for the Unit Examinations only in 1986).

On receipt of this letter of 17.8.1982 (P 1), the petitioner appealed to the Vice-Chancellor against the decision of the Examinations Committee by letter dated 23.8.1982 (P 2). In this appeal of 23.8.1982 (P 2) the petitioner admits in paragraph 07 that when she met Dr. Jayaratne and Dr. (Mrs.) Seneviratne on 21.7.1982, Dr. (Mrs.) Seneviratne told her that some papers had been found attached to her answer script of the C. 203 Organic Chemistry paper, and that Dr. (Mrs.) Seneviratne showed her the three sheets. She also states that the three sheets were at that time not attached to her answer script, and the answer scripts were not shown to her. In this appeal (P 2) she had set out mainly four grounds of appeal to wit :–

(1) That she was not given notice of any inquiry that was going to be held against her nor any notice of the charge alleged against her regarding an examination offence.
(2) She was not given adequate opportunity of being heard or properly presenting her case against any charge.
(3) The decision of the Examinations Committee was contrary to fact and law, arbitrary and unilateral and contrary to all principles of fairness.

She appealed that the decision of the Examinations Committee contained in the letter of 17.8.1982 (P 1) be quashed

The present application before this Court is for an Order in the nature of a Writ of Certiorari to quash the decision of the Examinations Committee contained in the Vice-Chancellor's letter dated 18.4.1983 (P 7), which conveyed the order made by the said Committee, after the receipt of the report from the Sub-Committee which heard the appeal. Letter (P 7) stated that the Examinations Committee recommended that the punishment informed by letter of 17.8.1982 (P 1) should stand. The earlier letter of punishment issued on the petitioner by the Examinations Committee dated 17.8.1982 (P 1) informed the petitioner that the Committee decided :

(1) That her candidature at the April 1982 Unit Examination be cancelled.
(2) To debar the petitioner from sitting for any examination for a period of three years.

The petitioner in this application has also applied for the grant and issue of an order in the nature of 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 this application for the grant of Writs are as follows :–

(*a*) The petitioner was not served with any charge sheet relating to the particular offence which the petitioner was accused of committing.

(*b*) The evidence at the said inquiry 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 said Committee conducting the inquiry.

(*c*) The petitioner was not made aware of the evidence against the petitioner though the petitioner requested to be informed of such evidence.

(*d*) That at the first inquiry Dr. (Mrs.) Seneviratne said that the answer script and annexed papers were sent to the handwriting expert, but the petitioner is unaware of the report made by the handwriting expert.

In regard to this ground (*d*), both Dr. Jayaratne and Dr. (Mrs.) Seneviratne in their affidavit have denied that they informed the petitioner that her answer scripts and annexed papers were sent to the handwriting expert. The above affirmation by Dr. Jayaratne and Dr. (Mrs.) Seneviratne is proved intrinsically by the report of that Committee dated 28.7.82 (R 1), which report only recommends to the Examinations Committee that the answer script and the loose sheets of paper be referred to a handwriting expert for his opinion, whereas the petitioner appeared for the inquiry before this Committee prior to this report, that is on 21.7.82. Thus, this affirmation in paragraph 18 (*d*) of the petitioner's affidavit is at the least a gross error.

(*e*) 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.

(*f*) The petitioner is unaware of the evidence upon which the petitioner has been found guilty of the examination offence.

(g) The petitioner had no opportunity of meeting the evidence against the petitioner.

(h) The petitioner was not given a proper or adequate opportunity of presenting the petitioner's case before either the Examinations Committee or the Sub-Committee which heard the petitioner's appeal.

(i) The inquiries were not conducted fairly and were contrary to the principles of natural justice.

The grounds set out above (a), (b), (c), (f), (g), (h) and (i) are in line with the grounds urged by the student Fernando against whom there was a charge of an examination offence in the leading case of *University of Ceylon v. Fernando, (Privy Council)* (1) in which case like grounds were considered and ruled upon by Their Lordships of the Privy Council as set out in the Judgment of Lord Jenkins.

In the course of the submissions learned Queen's Counsel for the petitioner set out two additional grounds :–

(j) That there has been a delegation of power by the Vice-Chancellor, which is invalid.

(k) That the entire Board of Appeal appointed by the Vice-Chancellor did not sit to hear the appeal.

Learned President's Counsel for the respondents objected to these two grounds being raised stating that these two grounds have not been pleaded. I shall deal with this later.

The 1st, 2nd and 6th respondents filed objections. These objections have been supported with the affidavits of –

(a) Professor Stanley Wijesundera, Vice-Chancellor,

(b) Dr. O. W. Jayaratne and Dr. (Mrs.) Seneviratne,

(c) Professor M. L. T. Kannangara, and

(d) Mrs. P. Gnanaindram, Assistant Registrar.

and documents (R 1) to (R 8). The objections filed and the affidavits all denied generally that the inquiry into this examination offence was not held in a fair manner and that it was held in a manner contrary to the principles of natural justice. In the objections, paragraphs (5) and (10) – specifically 5 (b) to (i) and 10 (ii) set out the fair manner in which the first inquiry was held, according to the principles of natural justice, and in their affidavits Dr. Jayaratne and Dr. (Mrs.) Seneviratne affirm to these facts.

The first ground urged by the petitioner in her appeal to the Vice-Chancellor was that she was not given any notice of any inquiry that was going to be held against her nor any notice of the charge alleged against her regarding an examination offence. The first ground urged in the present application is also that she was not served with any charge sheet. This complaint is correct only in so far as it is seen that the letter summoning her to appear before Dr. Jayaratne on 21.7.1982 does not appear to have contained any charge or allegation. But the petitioner herself has affirmed in her affidavit that when she met Dr. Jayaratne and Dr. (Mrs.) Seneviratne on 21.7.1982, she was informed that some papers had been found attached to her answer script in the Organic Chemistry C. 203 examination for which she sat on 21.4.1982. Dr. Jayaratne and Dr. (Mrs.) Seneviratne have also affirmed to the fact that the petitioner was informed of the charge when she appeared before them.

In *Fernando's* case referred to above, Fernando was informed of the charge in two ways :-

(1) The letter dated 16.5.1952 sent to him to appear before the inquiry, informed Fernando of the allegations against him.

(2) When Fernando appeared before the Committee, he was informed of the allegation Miss. Balasingham had made against him, relating to the part of the Physics paper in the German Language.

The case shows that still Fernando quibbled that he was not informed of the subject matter of the inquiry, the charges, merely because the said letter referred to one or more papers in the plural and not to the specific charge in respect of the allegation made by Miss. Balasingham.

In this matter before Court, this Court can act on the premises as accepted by both parties that on 21.7.1982 when the petitioner appeared before the Committee, she was informed of the examination offence alleged against her which amounted to an allegation that on 21.4.1982 she was found in possession of three loose sheets of paper containing notes of Chemistry, which were found tied up to her answer scripts. Regarding her other ground it is admitted that the evidence of the other witnesses who were questioned by this Committee was not taken in her presence. But the 1st, 2nd, and 6th respondents in their objections (which have been affirmed to by Dr. (Mrs.) Seneviratne and Dr. Jayaratne) have stated that the

petitioner was informed by the Committee of Inquiry that they had questioned the examiners who stated that the said three sheets were found tied up with her answer book. The petitioner was informed that the Supervisor, Professor M. L. T. Kannangara and the Invigilators Dr. S. Hettiarachchi, Dr. A. N. Abeywickrema and Dr. R. Abeysundera have been interviewed and have stated that no loose sheets were issued to the candidates, and only complete books of 8 pages initialled by the supervisor and containing the date stamp had been issued to the candidates.

These respondents have averred (and the Committee of Inquiry Dr. (Mrs.) Seneviratne and Dr. Jayaratne have affirmed to this) that 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, that it was pointed out to her that the date stamp on the said three sheets bore the date 19.8.1981, on which date she had sat for another Course Unit Examination Z. 305 at the University, that the Sub-Committee questioned the petitioner 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 book in view of the procedure followed, both during and after the examination to ensure that answer books would not get into unauthorised hands, and that unauthorised persons do not have access to the same, but she was unable to offer any explanation. Professer M. L. T. Kannangara has affirmed to the fact that candidates were only issued complete books of 8 pages bearing the date stamp 21.4.82 and initialled by him, and that Professor Kannangara stated these facts to Dr. Jayaratne and Dr. (Mrs.) Seneviratne in the course of the inquiry. The 6th respondent Mrs. Gnanaindram has affirmed to the fact that the petitioner sat for the Organic Chemistry paper at the Course Unit Examination Z. 305 held on 19.8.81, at which examination candidates were issued with loose sheets of paper which bore the University date stamp 19.8.1981. Dr. Jayaratne and Dr. (Mrs.) Seneviratne have affirmed to the fact that the petitioner was informed of the charge and the evidence against her and given every opportunity of meeting the same and presenting her position, and to the fact that the inquiry was conducted in the manner set out in paragraph 5 (*b*) to (i) and 10 (i) and (ii), as stated in the statement of objections of the 1st, 2nd and 6th respondents.

Along with the objections set out above is filed a very vital document which can throw light on the question as to whether a fair inquiry was held and principles of natural justice observed. That is the report of the Committee of Inquiry consisting of Dr. Jayaratne and Dr. (Mrs.) Seneviratne to the Vice-Chancellor dated 28.7.1982 (R 1). This report (R 1) states that the inquiry in respect of the examination offence concerning the petitioner was the result of a letter addressed to the Head of the Department of Chemistry by four examiners who set and marked the paper C. 203 Organic Chemistry. The names of the examiners are given. The Report (R 1) states that the scripts of the petitioner were obtained and the four examiners among whom was the examiner, Professor M. Mahendran were interviewed by the Committee. Then the Committee had interviewed Professor Kannangara, the Supervisor at that examination and the invigilators who were mentioned above. After interviewing these officers of the University, this Committee had interviewed the two candidates against whom allegation of an examination offence was made : Candidate No. S. 256 M. A. S. de Upali and candidate No. NS 1811 Chulasubadhra de Silva, this petitioner. The report states that Upali on being questioned admitted that he brought loose sheets of paper into the examination hall and tied them with the main script. The report (R 1) states that the present petitioner was confronted with the above evidence obtained at the interviews and her answer was –

(*a*) That the handwriting on the last three loose sheets was not hers, and

(*b*) That she had not attached the said papers to her answer script.

(R 1) also shows that the Committee considered the possibility as to, by whom these three sheets of paper could have been introduced into the answer script of the petitioner and pointed out to her that that could have been done only by –

(1) Herself,

(2) An Invigilator,

(3) The Supervisor, or

(4) 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. The

Report (R 1) states that however she insisted on her denials, and accordingly, she was asked to give a written statement, which statement is attached to the Report annexed "E". This document "E" is not a part of the brief before this Court. This Committee has not come to any finding as to whether the petitioner had committed any examination offence but reported the facts to the Examinations Committee. This Committee had at its meeting held on 2.8.1982 held that the petitioner has committed an examination offence and imposed punishment (R 4 of 2.8.1982).

I have set out the evidence against the petitioner in detail. The affidavits of the respondents and the supporting affidavits and documents clearly show that the petitioner was informed of the nature of the offence and the evidence against her. This has to be accepted. The petitioner's complaint that no evidence was led in her presence is factually correct. The affidavits of the respondents and the supporting evidence show that at the inquiry held on 21.7.1982, the petitioner was given proper and adequate opportunity of presenting her case.

The petitioner has also complained that the Board of Appeal which heard her appeal on 25.11.1982 did not hear any evidence in her presence, did not give her an opportunity of presenting her case and also did not accede to her request to be represented by another person at the inquiry. These are the main allegations made in respect of the appeal heard by the Sub-Committee. The 3rd, 4th and 5th respondents who in fact heard the appeal have filed objections and on their behalf Dr. G. C. N. Jayasuriya the 5th respondent, who was the Chairman of this Sub-Committee has filed an affidavit stating that the petitioner was given every opportunity of presenting her appeal and explaining her position and matters against her. Since she has complained to the Vice-Chancellor that she was not shown her answer books at the original inquiry, the Board of Appeal departed from the normal university practice and showed her the answer scripts which consisted of three books Index No. NS.1811.

The most vital piece of evidence against the petitioner had been the fact that the three loose sheets of paper were university stationery and had the university date stamp 19.8.1981 on which day she had sat for a paper in the Course University Examination Z. 305, from which it has been inferred that she had the opportunity of removing the loose sheets with the date stamp 19.8.1981. In the examination rules marked (R 2),

Rule 4 states as follows :

". . . . . the Books, notes . . . . . which a candidate has brought with him should be kept at a place indicated by the Supervisor/Invigilator".

Rule 10 is as follows :

". . . . . all material supplied, whether used or unused, shall be left behind on the desk and not removed from the examination hall".

The Committee that inquired into the examination offence has considered whether a Supervisor/Invigilator could have introduced these loose into the script obviously due to Rule 26 in (R 2) –

"Every candidate shall hand over the answer script personally to the Supervisor/Invigilator or remain in his seat until it is collected. On no account shall a candidate hand over his answer script to the attendant, a minor employee or another candidate".

A point has been made by the petitioner that the opinion of the handwriting expert was not obtained though the Committee of Inquiry so recommended. The document filed (R 7) shows that the Government Examiner of Questioned Documents wanted material written by the petitioner in the normal course of work, lecture notes, tutorials in the same subject Organic Chemistry. The report (R 8) of 19.1.1983 of the Government Examiner of Questioned Documents shows that the petitioner has not furnished the specimen handwriting as required by the Examiner of Questioned Documents, and as such he has been unable to make a comparison of the petitioner's handwriting with that of the handwriting in the three loose sheets of paper which had been marked "X", "Y" and "Z". There is material to show that the petitioner has not fully co-operated with the University authorities to furnish the kind of handwriting that was required. A glaring example of this non-co-operation is the E.Q.D's statement in (R 8) as follows :

"11 pages of casually written writings which have been struck off with a ball point pen. However, these writings are of a different subject matter".

Further, the respondents have quite correctly stated that the case alleged against the petitioner was the introduction of extraneous papers (notes) into the examination hall and found tied to her answer

script, that the proof of this examination offence does not require that such notes should be in the handwriting of the candidate himself. This is a very acceptable statement made by the respondents.

Learned Queen's Counsel for the petitioner submitted that it was not clear what was the offence alleged against the petitioner in relation to Rules for Examination Offences approved by the Senate on 31.7.1980 (R 3). The respondents appeared to state that the examination offence alleged against the petitioner was contained in Rule 2 –

"Possession of unauthorised material".

Rule 2 (i) – states as follows –

"Any candidate found in possession of University examination stationery not made available to the candidate for the paper in question . . . . .".

Rules 2 (ii) and (iii) –

"Any candidate found in possession of other unauthorised material . . . . .".

It was submitted that there was no evidence that the petitioner was *"found in possession"* of any unauthorised material. Thus, according to this submission the scope of this Rule 2 is that a candidate must be found physically in possession of unauthorised material. Learned President's Counsel for the respondents in reply submitted that the words "found in possession" must be construed to mean that that there was evidence to form a reasonable conclusion or inference that a candidate and in this instance the petitioner, was found in possession of unauthorised material in the examination hall. Found in possession does not mean that the candidate must be caught physically in possession of the unauthorised material. The term "found in possession" must be given an extended meaning as the term "Brothel" was given in the case of *Dorothy de Silva v. City Vice Squad* (2) in order to "suppress the mischief and advance the remedy". In the case of *Karamjit Kaur v. Punjab University* (3) the Court held that in case of a disciplinary inquiry into an examination offence probabilities and circumstantial evidence can be taken into consideration for the proof of it. Thus it is quite clear that in the instance of this petitioner, the Examinations Committee has based its conclusion on inferences drawn from probabilities and circumstantial evidence and has in no way misdirected itself on either facts or law.

I have set out above the material on which the petitioner has been found by the Examinations Committee to have committed an examination offence and imposed the said punishment on her. It is not the function of this Court to determine whether the finding is justified or not. A finding of fact by a Tribunal such as this can be set aside by way of a writ only if it is found that there was no evidence at all to base such a finding, or if the Tribunal has not properly directed itself in evaluating the evidence and drawing necessary inferences and could not have come to that conclusion if it properly directed itself.

A disciplinary inquiry of this nature held by a University is a quasi-judicial inquiry. The duty cast on this Court in this Writ Application is to consider whether the petitioner has had a fair hearing, that is whether the rules of natural justice have been observed. I should add whether such rules have been observed at least in substance. In the field of administrative law a distinction has been drawn as to what is a fair inquiry or trial in adjudicatory proceedings and a disciplinary inquiry of this nature. If there are no rules framed governing a disciplinary inquiry of this nature, it is the duty of the University to observe such rules of inquiry and procedure which would ensure to the student a fair hearing. In the Privy Council case *University of Ceylon v. Fernando (supra)* Lord Jenkins delivered the judgment, having considered several leading English cases, in which the principles of natural justice that should be observed by a quasi-judicial tribunal have been expounded, to wit – *Russell v. Duke of Norfolk* (4) *General Medical Council v. Spackman* (5) per Lord Atkin at page 638. In the *Board of Education v. Rice* (6) Lord Loreburn, L.C. in his famous dictum laid down that a tribunal was under duty to "act in good faith, and fairly listen to both sides for that is a duty lying upon every one who decides anything." In *De Verteuil v. Knaggs* (7) it was laid down as follows : – "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". I must state that the petitioner had made no allegation of bad faith, prejudice or bias against any party respondent. In fact the Board of Examiners who reported to the Head of the Department that loose sheets of paper were found tied to the answer scripts of the petitioner was a multi-racial board of examiners.

The case of *Karamjit Kaur v. Punjab University (supra)* was a like instance in which a female candidate Karamjit Kaur had been dealt with by the Punjab University in respect of an examination offence. Khanna, J. who (among the cases referred to, also considered the local case of *Fernando* – Privy Council) set down the principles of natural justice that should be observed in respect of a candidate charged for having used unfair means at an examination :–

(1) The educational authority has to follow such procedure, while determining the correctness of those allegations, as is prescribed by the regulations or by-laws.

(2) In case the regulations or by-laws prescribed no procedure, it would be for the authority to devise the procedure as it considers necessary, to satisfy itself with regard to the correctness of the charge.

(3) The procedure so adopted should be fair and not violative of the principles of natural justice. It need not however, be the same as govern trials in ordinary courts of law.

(4) The candidate concerned must be informed of the charge and an adequate opportunity should be given to defend himself.

(5) In case such an opportunity has been given to the candidate, and there is some material before the prescribed authority about the use of unfair means, and the prescribed authority accepts that material and is not actuated by any hostile animus, the Court would not interfere with the decision of the aforesaid authority even if the Court disagrees with the conclusion of the authority.

This Court has to test whether the petitioner has received a fair inquiry on the touchstone of the principles set out in *Fernando's Case*, in that of *Karamjit Kaur* and such other like cases. There is no common yardstick to measure whether principles of natural justice have been observed. In respect of each case ; whether such principles have been observed has to be decided in relation to the facts and circumstances of that particular instance. The principles laid down in the Privy Council case – *University of Ceylon v. Fernando (supra)* were considered and applied in a different context by this Court in the case of *Sarath Nanayakkara v. University of Peradeniya and Others* (8) per Seneviratne, J. with B. E. de Silva, J. concurring.

The first complaint made by the petitioner is that she was not served with any charge sheet. I have set out the above facts pertaining to the informing of the charge, and also drawn a distinction between this instance and *Fernando's Case*. The petitioner in this case had to face a straightforward allegation that unauthorised loose sheets were tied to her answer script. When confronted with the allegation and the evidence against her, she set out the two possible defences which in her view she could have taken –

(1) She denied the allegation.

(2) She stated that the loose sheets did not contain her handwriting.

I have dealt with the position regarding whether the 1st respondent should prove that the loose sheets were in her handwriting. Even at the hearing of the appeal the petitioner had not spelled out any other defences or made an application to lead any evidence on her behalf documentary or oral. These circumstances show that though she had to meet the charge at the first time she appeared before the Committee on 21.7.1982, she has been adequately informed of the charge against her. I hold that the petitioner was adequately informed of the charge, that she had fully appreciated the charge against her, and no prejudice has been caused to the petitioner on this ground.

A set of other grounds urged are that evidence was not led in the presence of the petitioner ; the petitioner was not provided with copies of the proceedings ; the petitioner was unaware of the evidence against her, and had no opportunity of meeting the evidence against her. These are the like submissions as mentioned by me above, which had been made in *Fernando's* case. In that case the Privy Council held that principles of natural justice had not been violated by the fact that the evidence was not led in the presence of Fernando, and that Fernando had no opportunity to question the witnesses. There are no grounds for this Court to come to a different view in this instance. There is no evidence that the petitioner made an application for the copies of the proceedings before the Committee of Inquiry. I accept the affirmations of Dr. Jayaratne, Dr. (Mrs.) Seneviratne and that of Dr. Jayasuriya, the Chairman Sub-Committee of Appeal that she was adequately informed of the allegation against her, of the evidence against her, and given every opportunity to defend herself. As such I dismiss these grounds. The petitoner's real ground seems to depend on the fact that the report of the handwriting expert was not obtained. This submission has been dealt with earlier.

At the hearing of this application a ground that was urged with much force was that the petitioner made an application before the Sub-Committee which heard her appeal, to be represented by another person, and that the Committee held that it was not necessary at that stage for the petitioner to be represented at the inquiry. This raises an important issue as to whether it is a requirement of natural justice that a party to an inquiry before a quasi-judicial tribunal had a right to be represented by a lawyer or a friend. The relevant principle is very succinctly set out in Halsbury : Laws of England. 4th Ed. Para. 76 (Page 94) – "Prima facie, one who is entitled to appear in person is entitled to be legally represented ; but it appears that in informal proceedings before a domestic tribunal natural justice does not usually imply the right to be thus represented". The cases I will now consider elucidate the principle that a person has no right of representation before a domestic tribunal, but it is left to the discretion of such a tribunal whether to allow such a person to be legally represented or not.

In the case of *Pett v. Greyhound Racing Association Ltd.* (9) the National Greyhound Racing Club proposed to hold an inquiry against a trainer of dogs as to whether drugs had been administered to the dogs. The trainer sought to be represented by Counsel at the inquiry. The local stewards after consideration decided not to allow the trainer to be represented by a lawyer. This refusal by the stewards was challenged in Court. Lyell, J. held that the trainer did not have a right to be legally represented, in the absence of such requirements in the instrument conferring the powers on the domestic tribunal. The tribunal was required to comply with elementary and essential principles of fairness. In this case Lyell, J. followed the principles set out in the case of *University of Ceylon v. Fernando (supra)* and ultimately held as follows :– "I find it difficult to say that legal representation before a tribunal is an elementary feature of the fair dispensation of justice". As will be shown later Courts have disagreed with the application of this principle in the strict form in which it has been laid down in *Pett's* case.

In the case of *Enderby Town Football Club Ltd. v. The Football Association Ltd. and Another* (10) a Football Club which appealed against the decision of the County Football Association on certain points of law requested permission from the Football Association to be represented by counsel and solicitor at the hearing of the appeal. The Football Association refused to allow the club to be legally represented

on the appeal. The club moved for an injunction to restrain the hearing of the appeal unless the club was permitted to be legally represented. It was held that as the rules of the Football Association excluded legal representation, the club was not entitled to have legal representation at the hearing of the appeal. Nevertheless, the Court went on to discuss whether the rules of natural justice required that legal representation should be permitted before a domestic tribunal. Lord Denning, M.R. who delivered the judgment ruled as follows (Page 218) – (*B*), (*C*) and (*D*) :–

> "The case thus raises this important point : 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 has no absolute right to be legally represented. It is a matter for the *discretion* 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 . . . . . I think that the same should apply to domestic tribunals, and for this reason : In many cases it may be a good thing for the proceedings of a domestic tribunal to be conducted informally without legal representation. Justice can often be done in them better by a good layman than by a bad lawyer . . . . . But I would emphasize that the discretion must be properly exercised. The tribunal must not fetter its discretion by rigid bonds. A domestic tribunal is not at liberty to lay down an absolute rule : 'We will never allow anyone to have a Lawyer to appear for him'. The tribunal must be ready in a proper case, to allow it. That applies to anyone in authority who is entrusted with a discretion. He must not fetter his discretion by making an absolute rule from which he will never depart . . . . . ".

Denning, J. considered the principle laid down in the case of *Pett. v. Greyhound Racing Association (Supra)* and indicated that in his Lordship's view the broad principles set out by Lyell, J. were an error in law. In this instance Lord Denning did not rule whether legal representation should have been allowed as he held that the proper remedy of the Football Club was an action in Court for a declaration, in which case there would undoubtedly be legal representation for the club.

Learned Queen's Counsel for the petitioner relied strongly on the decision in the case of *R. v. Secretary of State for the Home Department and Others, ex Parte Tarrant and Another, R. K. Wormwood Scrubs Prison Board of Visitors, Ex Parte Anderson and Others* (11). The applicants who were convicted prisoners were charged with grave offences against prison discipline. Inquiries were held by Prison Board of Visitors into the charges against the applicants. Some of the applicants requested legal representation while some requested assistance of a friend at the hearing. The Board of Visitors refused the requests in each case. The applicants applied to Court by way of writ of certiorari on the grounds :

(*a*) That a prisoner was entitled as of right to legal representation or assistance of a friend or advisor.

(*b*) Alternatively the Boards had a discretion in the matter and ought to have exercised the discretion by allowing legal representation.

The Court held that although a prisoner appearing before the Board of Visitors on 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. The Court held that it was wrong for such Board to take the firm view that the applicant had no right to legal representation or assistance and that it had no power to grant it. Webster, J. who delivered the main judgment set out the "considerations which every Board should take into account when exercising its discretion whether to allow legal representation or to allow the assistance of a friend or adviser. (This list is not of course, intended to be comprehensive ; particular cases may throw up other particular matters)". The considerations set out by Webster, J. are :

(1) The seriousness of the charge and the potential penalty,

(2) Whether any points of law are likely to arise,

(3) The capacity of a particular prisoner to present his own case.

In amplification of this point (3) the following passage from a Home Office Research Unit Paper has been quoted –"some of the prisoners were poorly educated and not very intelligent. Furthermore a few spoke poor English and a few appear to have psychiatric problems. Unless they are given considerable assistance, it is

unrealistic to expect such men to prepare an adequate written statement or to present their case effectively". The ratio decidenda of the case is that the Boards were in error when they held as a rule that prisoners were not entitled to representation and there was a failure to consider the exercise of the discretion to allow legal representation in a fit case.

In the instance before me the Sub-Committee to hear the appeal appointed by the Vice-Chancellor has used its discretion and decided that representation was not necessary on behalf of this petitioner at that stage. The Sub-Committee to hear the appeal has not as in the case of the Boards of Prison Visitors decided that the petitioner was not entitled to representation. The question arises whether the use of this discretion by this Sub- Committee was a proper exercise of it. In the light of the principles set out as guidelines for the exercise of discretion by Webster, J. consideration number (1) the seriousness of the charge and the potential penalty only apply to this instance before me. Considerations (2) and (3) do not apply. The cases I have set out above all dealt with domestic inquiries held by various Boards particularly Sport Bodies. Administrative Law has drawn a distinction between the application of the principles of natural justice in respect of domestic inquiries held by academic bodies, such as Universities, colleges, and other bodies such as the Sports Bodies referred to earlier. This principle in relation to academic discipline has been set out as follows :—"the right to a fair hearing has been invoked in a number of cases by senior and junior members of Universities and colleges, though not as yet with success. The Courts have in general held that academic disciplinary proceedings require 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". Wade – Administrative Law (5th Ed.) pages 501-502. I have earlier referred to the dicta of Webster, J. who dealt with the considerations : for the exercise of discretion and stated as follows "This list is not of course, intended to be comprehensive ; particular cases may throw up other particular matters". In respect of this dicta I should state that we must consider the principle of representation legal or any kind of representation in the context of what prevails in our country. Inquiries regarding academic discipline should be fair , expeditious and not unduly time consuming. None of the cases which have been referred to above as regards legal or other representation are cases arising from academic discipline. There is no reported instance so far in our country where at an university domestic

inquiry pertaining to students there has been legal representation. If legal representation is permitted here in respect of domestic inquiries pertaining to university discipline, those inquires will also go the way the inquiries have gone before Primary Courts, Labour Tribunals, Rent Boards and such others :– long drawn inquiries, applications for dates after dates, and sometimes mostly irrelevant prolonged proceedings. I have referred to the evil and the ills of legal representation which will effect domestic disciplinary inquiries by a university. Perhaps, when the Board of Appeal rejected the application of the petitioner for representation, the Board had in mind the evil I have referred to above. In this instance I cannot at all hold that the Sub-Committee erred in the exercise of its discretion, in holding that legal representation was not necessary at that stage, which was the stage of an appeal to the Vice-Chancellor. I held that no principle of fair-play or of natural justice has been violated by this petitioner not having representation legal or otherwise at the hearing of the appeal.

In the course of the argument learned counsel for the petitioner raised two matters :

(1) That there has been a delegation of the disciplinary powers of the Vice-Chancellor under the Universities Act, No. 16 of 1978, and that the Vice-Chancellor had no power to delegate.

(2) That the full Committee which was appointed by the Vice-Chancellor to hear the appeal did not hear the appeal.

Learned President's Counsel for the respondents objected to these two grounds on the premises that these two grounds have not been pleaded, and that this Court has held that in Writ Applications grounds not pleaded cannot be set up in the course of the hearing. There are two decisions of this Court supporting this objection to raising new grounds at this hearing, to wit – *T. Jayalingam v. University of Ceylon* (12) and *Carron v. Land Reform Commission* (13). The second ground that the full Board did not sit cannot also be factually supported. The Vice-Chancellor appointed a Sub-Committee consisting of the 2nd, 3rd, 4th and 5th respondents to this application to hear the appeal. The 2nd respondent excused himself and did not function in the Committee, as such the 3rd, 4th and 5th respondents only heard that appeal. There is this distinction in the instance of the present application, from the instances which arose in the cases of *Paul v. Wijerama* (14) *Wijerama v. Paul* (15) and in *Fernando's* case referred to above, in which cases it was revealed that on certain occasions the entire Committee did not sit but some of them sat.

In view of the reason given by me above, I hold that the petitioner had a fair inquiry before the original inquiry Committee and also before the Sub-Committee which heard the appeal. but I must add that it would have been more advisable for the University to have informed the petitioner in the letter written to her on 16.7.1982 (not produced) that an allegation has been made that loose sheets of paper containing notes were tied to her answer script and that she should present herself for an inquiry to be held by Dr. Jayaratne on 21.7.1982. If this step was taken there may have been no ground for complaint by this petitioner and for these prolonged proceedings which have commenced in this Court on 4.7.1983, and continued up today (and with a likelihood of further legal proceedings).

The application of the petitioner is refused, and the application is dismissed with nominal costs fixed at Rs. 250.

B. E. DE SILVA, J. – I agree.

Application dismissed.