

SENEVIRATNE
v.
TISSA DIAS BANDARANAYAKE AND ANOTHER

SUPREME COURT
AMERASINGHE, J.,
DHEERARATNE, J. AND
WIJETUNGA, J.
S.C. APPLICATION
NO. S.C./SPL (WRIT) 3/98
COURT OF APPEAL APPLICATION
NO. C.A. 676/98
MAY 20, 1999.

Writ of Certiorari – Report of a Commission of Inquiry under the Special Presidential Commissions of Inquiry Law – Jurisdiction of the Court – Audi alteram partem rule – Sections 9 (2), 16 and 18 of the Law – Duty of the Commissioners to personally hear both sides – Abdication of the authority of the Commission.

The President acting under section 2 of the Special Presidential Commissions of Inquiry Law, No. 7 of 1978 as amended, appointed a Commission of Inquiry to inquire into the circumstances relating to the assassination of Lalith William Athulathmudali and certain antecedent attacks on him. The Warrant, *inter alia*, authorised the Commission to obtain information as to whether there was a failure or omission on the part of any public officer to perform any duty required of him by law in relation to the investigations into the matters referred to in the warrant and whether there was a failure to provide or intentional withdrawal of security by the authorities at the public meeting at which the late Athulathmudali was assassinated, if so the identity of the person or persons responsible for such conduct.

Acting on information furnished by a team of police officers deputed by the Commissioners to interrogate certain persons at which the Commissioners were not present, the Commission found the petitioner (a Deputy Inspector-General of Police) and other police officers guilty of omissions and failures to perform their duty regarding certain attacks on late Athulathmudali and of conduct which constituted assisting the assassination and recommended disciplinary action and prosecution for any offences which the petitioner and other officers may have committed.

Held:

1. There was no failure on the part of the petitioner to produce materials and records necessary to establish his case such as pleadings and objections. He need not have produced any material other than the Report of the Commission on which he relied.
2. The petitioner was not guilty of delay in making his application. He has acted with due diligence.
3. The jurisdiction of the Court to review the findings of the Commissions is not precluded by sections 9 (2) and 18 of the Special Presidential Commissions of Inquiry Law, No. 7 of 1978 as amended by Act No. 4 of 1978. (*B. Sirisena Cooray v. Tissa Bandaranayake and two others* (1999) 1 Sri L.R. 1; *T. Wijayapala Hector Mendis v. P. R. P. Perera and others* S.C. Special (Writ) No. 2/98 S.C. Minutes 27 April, 1998 followed).
4. The jurisdiction of the Court is also not ousted by reason of the fact that the application was made after the Commission had become defunct.
5. Having regard to the adverse consequences of its findings the Commission was obliged to act fairly and was subject to the *audi alteram partem* rule (*B. Sirisena Cooray's* decision followed).
6. In reaching its findings against the petitioner the Commission abdicated its authority to the team of police officers who collected information for the Commission. The Commission failed to comply with section 16 of the Law when the petitioner became, in the opinion of the Commission, a person whose conduct should be subject to inquiry or who was implicated or concerned in the matter under inquiry. This failure deprived the petitioner of the opportunity to present his case which he was entitled to under section 16 and resulted in the unlawful and unwarranted condemnation of the petitioner.

Cases referred to:

1. *B. Sirisena Cooray v. Tissa Bandaranayake and others* (1999) 1 Sri LR 1.
2. *Wijayapala Hector Mendis v. P. R. P. Perera and others* SC Special (writ) No. 2/98 SC Minutes 27 April, 1999.
3. *Re Brook* 16 CBNS 416.

APPLICATION for a writ of certiorari against the Special Presidential Commission of Inquiry.

K. N. Choksy, PC with *S. C. Crosette-Thambia*, *M. D. K. Kulatunga*, *V. K. Choksy* and *Kishani Wijetunga* for the petitioner.

Wijedasa Rajapakse with *Dhammika Liyanage* and *Vijith Perera* for the 1st respondent.

D. P. Mendis with *M. W. B. Ekanayake* for the 2nd respondent.

Cur. adv. vult.

July 7, 1999.

AMERASINGHE, J.

On the 7th of December, 1994, Her Excellency the President in pursuance of the provisions of section 2 of the Special Presidential Commission of Inquiry Law, No. 7 of 1978 (as amended by the Special Presidential Commissions of Inquiry) (Special Provisions) Act No. 4 of 1978 appointed the Hon. Mr. Justice George Randolph Tissa Dias Bandaranayake, the Hon. Mr. Justice Dassanayake Padmasiri Swarnajith Gunasekera and Mr. Rajasuriya Appuhamilage Nimal Gamini Amaratunge as Commissioners to inquire into and obtain information in respect of the following matters:

- "(a) the circumstances relating to the assassination of the late Lalith William Athulathmudali at a meeting held at Kirulapone, on April 23, 1993, and the person or persons directly or indirectly responsible for such assassination and whether any persons conspired to assassinate, or aided and abetted in assassinating the said Lalith William Athulathmudali at Kirulapone on April 23, 1993.
- (b) the circumstances relating to the physical attacks on the late Lalith William Athulathmudali –
- i. at Pannala on November 3, 1991;
 - ii. at Madapatha, Piliyandala, on April 23, 1992;

- iii. at the Fort Railway Station on August 7, 1992; and
- iv. at Dehiwala on August 29, 1992;

and whether the persons involved in, or connected with, any or all of these attacks were directly or indirectly connected with or involved in the aforesaid assassination;

- (c) whether there was a failure or omission on the part of any public officer to perform any duty required of him by law, in relation to investigations into the incidents referred to in paragraphs (a) and (b);
- (d) whether there was a failure to provide, or intentional withdrawal of security by the authorities at the meeting held at Kirulapone on April 23, 1993, at which the late Lalith William Athulathmudali was assassinated and if so, the person or persons responsible for such failure or intentional withdrawal;
- (e) whether there was a failure by the authorities concerned to provide adequate personal security to the late Lalith William Athulathmudali despite repeated requests by him, for such security;

and to make such recommendations with reference to any of the matters that have been inquired into under the Terms of this Warrant."

The Warrant of Appointment further stated, *inter alia*, as follows:

"And I do hereby appoint you, the said Hon. Justice George Randolph Tissa Dias Bandaranayake, to be the Chairman of the said Commission.

And I do hereby authorise and empower you, the said Commissioners, to hold all such inquiries and make all other investigations, into the aforesaid matters as may appear to you to be necessary, and require you to transmit to me within three months from the date hereof, a report or interim reports thereon under your

hands, setting out the findings of your inquiries, and your recommendations.

And I do hereby direct that such part of any inquiry relating to the aforesaid matters, as you may in your discretion determine, shall not be held in public;

And I do hereby require and direct all State officers, and other persons to whom you may apply for assistance or information for the purposes of your inquiries and investigations to render all such assistance and furnish all such information as may be properly rendered and furnished in that behalf ;"

Following the resignation of the Hon. Mr. Justice Gunasekera on the 2nd of April, 1996, Her Excellency the President appointed Mr. Gunasena Wickrema Edirisooriya to be a Member of the Commission. Subsequently, Mr. Amaratunge resigned.

The respondents in the matter before us are Mr. Bandaranayake, the Chairman of the Commission, and Mr. Edirisooriya, Commissioner.

In pursuance of the Warrant, the Commission held inquiries and submitted its report to Her Excellency the President. The Report was published on the 30th of June, 1998, as Sessional Paper No. VIII of 1997.

In regard to the petitioner the Commissioners in their report concluded as follows :

(a) that the petitioner had failed to perform his duty impartially and according to law in that he failed to call for a report from the Senior Superintendent of Police, Mount Lavinia Division, on the instructions given by him by his letter dated the 10th of April, 1992, regarding the incidents that followed Mr. Athulathmudali's Madapatha, Piliyandala meeting held on the 07th of April, 1992; (page 37)

- (b) that after the shooting of Mr. Athulathmudali at the Kirulapone meeting, the petitioner and the Senior Superintendent of Police, Rukman De Silva, visited the meeting venue, found no fault with Inspector of Police, Ranagala, failed to visit the Police Station which was very close by and examine the records, and failed to make any remarks in the relevant record (OVb); (page 86)
- (c) that the petitioner and Assistant Superintendent of Police Gunaratne had instructed Inspector of Police Dharmawardene to hand over the pistol (found near Rangunathan's body) and the two magazines to Mr. Mendis, the Additional Government Analyst and not through the Magistrate, which was unusual and improper procedure; (page 116)
- (d) that the petitioner had acted improperly in removing the Identity Card (found near Rangunathan's body) before the arrival of the Magistrate at the scene and in not presenting it to the Magistrate there; (pages 111/112)
- (e) that the petitioner's letter dated 15.04.1993 marked P80 addressed to the Municipal Commissioner, Colombo, regarding the venue of meetings of the various political parties participating in the Provincial Council elections, "set the stage for what followed"; (pages 68/69)
- (f) that the said letter P80 "was deliberately and maliciously and cunningly arranged to give a veneer of propriety to an otherwise diabolical act of deception"; (page 76)
- (g) that the petitioner's answers regarding this letter P80 (contained in his recorded statement) "are vague and evasive and are not acceptable. It is just plain humbug"; (page 69)
- (h) that the petitioner together with the Senior Superintendent of Police Rukman De Silva, Assistant Superintendent of Police Dias Senanayake, and Inspector of Police, Ranagala, were all involved in refusing the venue asked for, to hold the Kirulapone meeting on 23.04.1993; (page 71)

(i) that there was a conspiracy among the petitioner and the said Police officers to deny the market junction to the DUNF political party but instead offer the playground, for the said meeting; (page 71)

(j) that the petitioner has been a co-conspirator with the said Inspector of Police Ranagala, the said Assistant Superintendent of Police Dias Senanayake, and others, to withdraw Police security normally extended for such political meetings; (page 77)

(k) that the petitioner's denial of knowing anything about the said withdrawal of security from the meeting and that he had learnt of it only subsequently from the newspapers, is "again just plain humbug" and that "if true, it is an utter dereliction of duty"; (page 76)

(l) that the petitioner and the said three Police officers were together involved in –

(1) changing the venue of the meeting without lawful reason from the market junction venue in Kirulapone, as requested, to the park:

(2) in giving permits for the use of loudspeakers at the park only:

(3) intentionally and deliberately not providing Police strength to cover the meeting, thereby exposing Mr. Athulathmudali to grave danger;

(4) that the LTTE had nothing to do with any of this; (page 82)

(m) that "the investigations regarding the death of Ragunathan were most unsatisfactory" and that those involved were the petitioner, the eight other named Police officers and other CDB officers; (page 217).

The Commissioners on the basis of their conclusions referred to above with regard to the conduct of the petitioner and the other Police official in their Report at page 217 stated as follows:

"The IGP should have their conduct investigated through the entries they have made in Police Books, the omissions and failures to perform their duty as seen in those entries and statements recorded by them and take some meaningful disciplinary action against them. This report is replete with criticisms of their conduct. They have no doubt facilitated the commission of these crimes and helped in the cover up – this amounts to conspiracy and abetment of murder."

At paragraph (1i) in the summary of the report, under the caption, "Conduct of the Police Officers", the Commissioners stated as follows:

"The conduct of the Police officers, both in regard to the physical attacks on Athulathmudali and the part they played in assisting in the assassination and the plot to fabricate evidence has been referred to. The Police officers involved have been named in the report of the Commission. As they were public officers, no doubt acting under the influence of their political masters, the Commission has refrained from making any recommendations as to their civic rights, but wherever they have committed offences under the Penal Code they should be prosecuted and in any case disciplinary action should be taken against them by the Police Department."

At page 217 of the report, the Commissioners stated as follows:

"A large number of Police officers involved with the Kirulapone meeting and the murder investigations are guilty of misconduct and have been so involved because of external political influences and pressures, but are not in politics themselves; hence we do not wish to make any recommendations in terms of section 9 of Law No. 7 of 1978. It is easy to record false facts and statements and admissions and confessions and obtain detention orders on what has been falsely recorded. It is for the Government to stem this level of corruption if possible. What the Commission has had to

say about the conduct of Police officers is in answer to the Terms of Reference in the Warrant, more specifically in respect of items (c) and (d) in the Warrant."

The petitioner was appointed as Deputy Inspector-General of Police in 1987 and held that rank at the time of the incidents required to be investigated by the Commission. The petitioner complains that the findings in the report of the Commission were:

- "(1) contrary to the facts and evidence placed before the Commission;
- (2) not supported and justified by evidence placed before the Commission;
- (3) based on surmise and conjecture;
- (4) based on inferences that could not be lawfully or reasonably made in law;
- (5) wholly unreasonable or irrational;
- (6) arrived at in breach of natural justice and due and fair procedure, by reason of the fact the petitioner was at no time notified by the Commission that the Commission was inquiring into the petitioner's conduct;
- (7) arrived at without the petitioner being made aware of any allegations or charges against him or being given the opportunity of explaining the same;
- (8) arrived at without observing the mandatory requirements of section 16 of Law No. 7 of 1978, of informing the petitioner that his conduct was the subject of inquiry by the Commission or that he was in any way implicated or concerned in the matters under inquiry."

The petitioner states that the findings and the Report were "*ultra vires*, a violation of the due administration of justice according to law, violative of statutory duties, contained errors of law, illegalities and departures from due and fair procedure and natural justice and were therefore liable to be quashed by *writ of certiorari*."

The respondents submitted that the application of the petitioner should be rejected for six reasons. I shall deal with each of them separately.

- (1) *The petitioner has failed to make the former Commissioners, the Hon. Mr. Justice Gunasekera and Mr. N. G. Amaratunge as parties to this application.*

The application is made for the purpose of obtaining a *writ of certiorari* to quash the findings and recommendations contained in the Report of the Special Presidential Commission of Inquiry made by the first and second respondents. As we have seen, Mr. Justice Gunasekera and Mr. N. G. Amaratunge resigned as Commissioners. It was not alleged that they had any part in arriving at the findings and recommendations contained in the Report of the Commission. In my view, it was unnecessary, and indeed, it would have been improper to have made them parties in this matter.

- (2) *The petitioner has failed to place all material before the Court and not called for any record.*

Learned counsel for the respondents did not identify materials and records that ought to have been placed before Court, nor did they offer any explanation of their contention. As far as the petitioner was concerned, he relied solely on the material contained in the Report of the Commission, the pleadings, including admissions contained in the statements of objections, and the law, to establish his case and, in my view, the petitioner need not have placed any other material before the Court.

- (3) *The petitioner has not come to Court with clean hands.*

This ground was set out in the statement of objections filed by the first respondent, but it was not dealt with by his counsel during the hearing. If it was meant to suggest that the petitioner ought not to be heard because he was, according to the respondents, found guilty of misconduct by the Commission, I must reject the objection, for the purpose of the petitioner's application is to have those findings (and the recommendations based upon them) set aside as being unwarranted.

- (4) *The petitioner is guilty of inordinate delay in making this application.*

If a person were negligent for a long and unreasonable time, the law refused afterwards to lend him any assistance to enforce his rights; the law both to punish his neglect, *nam leges vigilantibus, non dormientibus, subveniunt*, and for other reasons refuses to assist those who sleep over their rights and are not vigilant. Indeed, the Dhammapada, *Appamada Vagga*, 26, says:

*"Pamadamanuyunjanti
bala dummedhinho jana
Appamadam ca medhavii
dhananam settham'va rakkhati."*

(Fools, men of little intelligence, give themselves over to negligence, but the wise man protects his diligence as a supreme treasure. . .)

It was also said :

*"Appamatto pamattesu
suttesu bahujagaro
Abalassm'va sighthasso
hitra yati sumedhaso"*

(Heedful among the heedless, watchful among the sleeping, the wise man outstrips the foolish man as a racehorse outstrips an old horse.)

In the matter before me, the date of the "publication" of the Report of the Commission, is said to be "1998.01.30". However, this is stated in the Report with regard to printing information and means no more than the date on which the printing was completed. The act of the Report becoming publicly known took place several months thereafter. The petitioner was able to obtain a copy only in March, 1998. This was not disputed by learned counsel for the respondents. In my view, the filing of this application on the 13th of July, 1998, was neither evidence of neglect for a long and unreasonable time; nor was the petitioner heedless or one who had given himself over to negligence. I think he has acted with due diligence.

(5) *The Court had no jurisdiction to entertain the application.*

The challenge to jurisdiction was in two ways. The first was that the Court was precluded by the provisions of sections 9 (2) and 18 of the Special Presidential Commissions of Inquiry Law, No. 7 of 1978 as amended by section 7 of the Special Presidential Commissions of Inquiry (Special Provisions) Act No. 4 of 1978. I am in respectful agreement with the view expressed by my brother, Dheeraratne, J. in *Bulathsinghalage Sirisena Cooray v. G. R. Tissa Bandaranayake and G. W. Edirisooriya and the Attorney-General*,⁽¹⁾ and followed with approval by my brother Fernando, J. in *Thenahandi Wijayapala Hector Mendis v. Hon. Justice P. R. P. Perera, Hon. Justice H. Yapa, and Hon. Justice F. N. D. Jayasuriya*,⁽²⁾ that the jurisdiction of this Court to entertain an application for a *Writ of Certiorari* to quash the findings of a Commission of Inquiry appointed in pursuance of the provisions of the Special Presidential Commissions of Inquiry Law is not impeded by the provisions of sections 9 (2) and 18 of that Law.

The second challenge to jurisdiction was that, since the application was made after the Commission had become defunct, the Court has no jurisdiction to entertain the application or grant any relief.

The whole scheme of appellate procedure rests on the basis that a question of review or revision would ordinarily arise after the decision maker's work, whether on the whole matter or a specific matter, is at an end. If the proposition advanced by the respondents is accepted,

no appeal or application for revision or review would ever be possible. That would be out of harmony with settled law and practice and reason. In relation to the findings and recommendations of commissions of inquiry, any other view would have the horrendous consequence of leaving people exposed to unwarranted findings and recommendations that might deprive them of their liberty, property and rights, including the valuable right to enjoy a deservedly good reputation. I cannot, therefore, accept the submission of learned counsel for the first respondent on this matter.

(6) *The reasons given and findings and recommendations are ex facie within the said warrant and the provisions of the Special Presidential Commissions of Inquiry Law.*

Learned counsel for the respondents submitted that the task assigned to the Commissioners under the terms of the Warrant was to inquire into and obtain information in respect of certain specified matters and to make recommendations with reference to any of the matters required to be inquired into. The Commissioners had inquired into the various matters referred to in the Warrant and reported their findings and made recommendations on the basis of those findings, as they were required to under the Warrant. No consequences flowed from their findings and recommendations, and therefore, there were no decisions to be quashed by *certiorari*.

The Commissioners, engaged themselves not only in inquiring into certain matters and gathering information to be submitted to Her Excellency the President, but, as we have seen, they made specific findings of gross misconduct and criminal behaviour against the petitioner and recommended the Inspector-General of Police to take "meaningful disciplinary action" against the police officers concerned, including the petitioner. For their part in "assisting in the assassination and the plot to fabricate evidence", the Commissioners said that, as the petitioner and other police officers were "public officers, no doubt acting under the influence of their political masters, the Commission has refrained from making any recommendations as to their civic rights, but wherever they have committed offences under the Penal Code they should be prosecuted and in any case disciplinary action should

be taken against them by the Police Department". In the circumstances, I cannot accept the suggestion of learned counsel for the first respondent that the findings and recommendations of the Commissioners were innocuous.

Dealing with the proposition that bodies such as commissions of inquiry are neither courts of law nor even quasi-judicial tribunals, "for they decide nothing; they determine nothing. They only investigate and report", the Master of the Rolls, Lord Denning, in *Re Pergamon Press Ltd.* [1970] 3 A11 ER 535 at 539, said:

"But this should not lead us to minimize the significance of their task. They have to make a report which may have wide repercussions. They may, if they think fit, make findings of fact which are very damaging to those whom they name. They may accuse some, they may condemn others; they may ruin reputations or careers. Their report may lead to judicial proceedings. It may expose persons to criminal prosecutions or to civil actions. . . Seeing that their work and their report may lead to such consequences, I am clearly of opinion that [persons appointed to inquire and report on matters] must act fairly. This is a duty which rests on them, as many other bodies, although they are not judicial or quasi-judicial, but only administrative. . ."

The views of Lord Denning were cited with approval by my brother Dheeraratne, J. in *Bulathsinghalage Sirisena Cooray (supra)*. I am myself in respectful agreement with the views expressed by the Master of the Rolls. Having regard to the harmful findings and recommendations of the respondents referred to above, I have before me as good an example as any of the imperative need for commissions of inquiry to be fair.

Did the Commissioners act "fairly"? One of the basic requirements of fairness is that no man shall be condemned unheard – *audi alteram partem*. It is "an indispensable requirement of justice that the party who has to decide shall hear both sides, giving each an opportunity of hearing what is urged against him". Per Erle, CJ., in *Re Brook*,⁽³⁾ it has long been a received rule that no one is to be condemned, punished or deprived of his property, unless he has had an opportunity

of being heard. In the words of the moralist and poet, Seneca, (*Medea*, 195):

Quicunque aliquid statuerit, parte inaudita altera, Aequum licet statuerit, haud aequus fuerit.

The principle was one that was recognized by society in Sri Lanka in Mediaeval times, if not earlier: "*ubhaya paksayen ma adyanta asa ganna dadak da.*" – (*Saddharmaratnavaliya*, 365).

The petitioner was condemned by the Commissioners without being given an opportunity of refuting what was being urged against him by a team of twelve police officers deputed by the Commissioners.

Several explanations for that course of action were urged by the Commissioners, namely, (1) that they were empowered by law to make use of the services of the police officers; (2) the competence and expertise of the team of police officers; (3) that there were a large number of police officers to be examined and interrogated and it was "impracticable" for the 'Commissioners to hear all these police officers'; and (4) the need for secrecy.

At pp 75-76 of their Report, the Commissioners stated as follows:

"All police officers connected with the several inquiries regarding the incidents contained in the warrant or who held positions of authority in those respective areas have been questioned by a special team of police officers headed by the Director, Special Investigations Unit, Police Headquarters, and their statements recorded in relation to the evidence and statements and documents available to the Commission. This was done in view of the provisions of paragraph 3 of the warrant to ascertain whether there has been a failure or omission to perform a duty required of a public officer by law. Their familiarity with the provisions of the Police Ordinance, the Criminal Procedure Code and Penal Code and Departmental Orders and Regulations, etc., were a great help.

The Commissioners were not present at these interrogations.

Persons interrogated were informed of all evidence, statements, documents and material (if any) against them. It was felt that the Police department being a vital component for the maintenance of peace and public order in the community should not be exposed to unnecessary publicity if misconduct was shown."

The Commissioners deputed a team of police officers to interrogate certain persons. The Commissioners admit that they were "not present at these interrogations". Learned counsel for the respondents submitted that the Warrant empowered the Commissioners "to hold all such inquiries and make all other investigations. . . as may appear to [them] to be necessary "; and that all State officers and other persons to whom the Commissioners may apply for assistance and information for the purpose of their inquiries and investigations were directed to "render all such assistance and furnish all such information as may be properly rendered and furnished in that behalf".

Therefore, learned counsel said, the Commissioners had acted properly. I am unable to agree with his submission. The fact that the Commissioners were authorized to obtain the assistance of State officers, did not discharge them from their duty of personally hearing both sides and giving the petitioner an opportunity of refuting what was being urged against them either by the investigators or other persons whose testimony was being recorded by the investigators.

I am of the opinion that however much the team of police officers may have been versed in the law and procedure, it did not permit the Commissioners to abdicate their authority: it remained their duty, and their duty alone, to hear the parties and form their independent views, for it was in *their* "prudence, ability and fidelity", the President repose confidence. The first respondent in his affidavit admits that the task of the team of police officers was not merely to gather information, but to do much more; namely, to respond to paragraph (c) of the Warrant. In paragraph 7, he stated that the team of police officers was directed to "submit details of the *outcome*" (the emphasis is mine) of the interrogatories and inquiries".

In paragraph 12 (b) (ii) he stated that the team of police officers was "to ascertain" (the emphasis is mine) "whether there has been a failure or omission to perform a duty required of a public officer by law as required by the provisions of paragraph 3 of the said Warrant". It may have been "impracticable" for the Commissioners to question and interrogate a large number of police officers; but, if in their opinion any police officer was a person whose conduct should have been the subject of inquiry or who in the opinion of the Commission was implicated or concerned in any matter under inquiry, such a person ought to have been so informed and heard before the Commission arrived at any findings with regard to such a person or made any recommendations based on such findings. The Commissioners could not "ascertain", that is find out or learn for a certainty, matters they did not themselves investigate. Yet, the Commissioners, without informing the petitioner of their opinion as to his conduct being the subject of inquiry or that he was implicated or concerned with any of the matters under inquiry, and without hearing what he had to say, nevertheless came to the conclusion that the petitioner was "beyond all reasonable doubt" guilty of criminal and official misconduct. (see p. 82 of the Report). In the circumstances, what the Commissioners were expressing was not their views but the opinions of the team of police officers.

With regard to the fear of jeopardizing the interests of the Police Department, the observations of the Commissioners in their Report on the basis of evidence untested for veracity, may have caused more harm than the Commissioners were at pains to avoid by not hearing the petitioner. If public hearings were regarded as harmful to public interest, the Commissioners were empowered to hold their inquiries in camera. The Warrant stated as follows: "And I do direct that such part of any inquiry relating to the aforesaid matters, as you may in your discretion determine, shall not be held in public". That direction was made in pursuance of section 2 (2) (a) of the Special Presidential Commissions of Inquiry Law which states that every Warrant issued under that Law "shall include a direction whether the inquiry or any part thereof shall or shall not be in public".

Learned counsel for the petitioner submitted that not only was the petitioner entitled to be heard, but that he had a statutory right to be represented by an Attorney-at-Law. Section 16 of the Special Presidential Commissions of Inquiry Law states as follows:

"Every person who is specified in a Warrant issued under this Law as a person whose conduct is the subject of inquiry under this Law or as a person who is in any way implicated or concerned in the matter under inquiry and any person who, in the opinion of the Commission, is a person whose conduct should be the subject of inquiry in the opinion of the Commission is in any way implicated or concerned in the matter under inquiry shall be so informed by the Commission and shall, after he is so informed, be entitled to be represented by one or more Attorneys-at-Law at such stage of the inquiry as is relevant thereto; and any other person who may consider it desirable that he should be so represented may, by leave of the Commission, be represented in the manner aforesaid."

Learned counsel for the second respondent submitted that, since the petitioner was not a person specified in the Warrant as a person who in any way implicated or concerned in the matter under inquiry, there was no obligation on the part of the Commissioners to provide the petitioner with an opportunity of being represented by an Attorney-at-Law. I am unable to agree with his submission. The section, in my view, contemplates two stages: At the outset, there may be a person who is specified in the Warrant as being a person whose conduct is the subject of inquiry or who is implicated or concerned in the matter under inquiry. Such a person would, of course, be entitled to be represented by an Attorney-at-Law. Subsequently, during the course of an inquiry, it may be the opinion of a Commission that a certain person whose conduct should be the subject of inquiry or is a person in any way implicated or concerned in the matter under inquiry. In such a case, section 16 makes it obligatory for the Commission to so inform such a person of its opinion. Section 16 states that such person ". . . shall, after he is so informed, be entitled to be represented by one or more Attorneys-at-Law at such stage of the inquiry as is relevant thereto. . ."

Although at first the petitioner was not a person specified in the Warrant as a person whose conduct was the subject of the inquiry or as a person who was in any way implicated or concerned in the matter under inquiry, he became, in the opinion of the Commission, a person whose conduct should be the subject of inquiry or who was implicated or concerned in the inquiry. The failure of the Commissioners to observe the duty imposed on them by section 16 to inform the petitioner of their opinion and the consequent failure of the petitioner to present his side of the matter, resulted in the unlawful and unwarranted condemnation of the petitioner.

For the reasons set out in my judgment, I make order that a mandate in the nature of a writ of *certiorari* shall issue forthwith quashing all and singular the findings made by the first and second respondents against the petitioner contained in the Report of the Special Presidential Commission of Inquiry regarding the Assassination of the late Lalith Athulathmudali, PC., and Connected Events, Sessional Paper No. VIII – 1997.

I further make order that the State shall pay the petitioner Rs. 25,000 as costs, for he has been driven to take legal proceedings to set aside damaging and unwarranted allegations made against him by a body appointed by the Executive.

DHEERARATNE, J. – I agree

WIJETUNGA, J. – I agree

Application allowed.

Certiorari issued.