As far back as 1961, the plaintiff had drawn the attention of the defendant to the fact that he was not in occupation of the said premises. On the basis that he had sub-let the premises, the plaintiff had served notice on him to vacate the premises and had even drafted a plaint on that basis. Until 1972, the plaintiff had no opporunity to seek ejectment on the ground of non-occupation. Immediately, the opportunity arose after awaiting the stipulated six months, he filed this action. Therefore, there has been no acquiescence by the plantiff.

I hold that the judgment in favour of the plaintiff has been correctly entered by the learned Magistrate and dismiss the appeal with costs.

Appeal dismissed

Mendis, Fowzie
and others
v.
Goonewardena, G. P. A. Silva

COURT OF APPEAL.
VYTHIALINGAM, J., ABDUL CADER, J., AND ATUKORALE, J.
C. A. APPLICATIONS. 669/78, 695/78, 766/78, 789/78, 873/78, 805/78, 880/78, 924/78, 1024/78, 421/78, 693/78, 750/78, 757/78, 912/78 AND 914/78
JULY 30 AND 31, 1979 AND
AUGUST 6, 8, 9, 10, 13, 14, 15, 16, 17, AND 20, 1979.

Writ of Certiorari – Is Commissioner holding inquiry under S. 2 of Commissions of Inquiry Act and making his report amenable to certiorari ? – Will certiorari lie where it would be futile ? – Natural justice – Duty to act fairly – Imposition of civic disabilities – Relevant person – Will quashing of findings of commission involve questioning of validity of laws which is prohibited by Article 80(3) of the Constitution ?

The President by warrant appointed two one man Commissions under the Commissions of Inquiry Act to inquire into and report (with their recommendations) on whether in the course of the administration by the Council or by any person appointed under any written law, of the affairs of each of the twelve municipalities specified in the schedule to the warrant, there had been incompetence, mismanagement, abuse of power, corruption, irregularities in the making of appointments of persons, or contraventions of any provisions of any written law and the extent of their responsibility. Upon receiving the reports Laws No. 38 and No. 39 of 1978 were passed imposing civic disabilities on certain persons specified in the Schedules to the two laws against whom findings had been made by the respective Commissioners. Fifteen applications were then filed by some of the persons

affected by the said laws seeking certiorari to quash the findings of the two Commissioners relating to them.

Two preliminary questions of law came up for decision namely :

1. Whether the reports and inquiries conducted by the two Commissioners under the provisions of S. 2 of the Commissions of Inquiry Act can be reviewed or be made the subject matter of review by the Court of Appeal and whether they are amenable in whole or in part to a writ of certiorari ? and

2. Whether in view of the passage of Laws Nos. 38 and 39 of 1978 (whose validity cannot be canvassed in Court in view of Article 80(3) of the Constitution) a writ of certiorari will in any event be futile and whether this Court will exercise its discretion to issue a writ which will be futile ?

Held

(1) The questions could be considered under the three parts of the proposition, as enunciated by Slesser L. J. that –

Whenever any body of persons

(a) having legal authority
(b) to determine questions affecting the rights of subjects, and
(c) having the duty to act judicially

acts in excess of its legal authority it will be subject to the controlling writ jurisdiction of the Court.

(2) (a) Generally legal authority means statutory authority or authority under the common law. This has been extended to include acts of public authorities including University disciplinary authorities who are not vested with any power under any statute or common law. But in the instant case the Commissioners being appointed by the President undoubtedly had "legal authority".

(b) (i) In making their report in this case the Commissioners had to come to findings and make determinations and any adverse decision would undoubtedly affect the character of the persons concerned and their reputation and integrity and ruin their careers in addition to making them suffer civic disabilities under the two laws. The determinations of the two Commissioners would grievously affect these persons of their own force, proprio vigore. The conclusions would therefore have to be arrived at by a process consistent with the rules of natural justice after informing the party of the case against him and affording him an opportunity to defend himself. The

rights affected need not be legally enforceable rights or confined to the jurisprudential concept of rights. They comprise an extensive range of legally recognised interests the categories of which have never been closed.

(ii) In the case of the imposition of civic disabilities the findings and determinations of the Commissions were a necessary and integral part of the proceedings which culminated in the rights of subjects being affected, while in the case of the character and reputation of the persons concerned they have been directly affected by the very force, proprio vigore, of their decisions and determinations.

(c) The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The Commissioners had a duty to act fairly by observing the rules of natural justice.

Accordingly the Commissioners were amenable to the writ jurisdiction of the Court.

(3) It is true that certiorári is a discretionary remedy and the court will not issue the writ if it would be futile to do so. But here the quashing of the decision or determination will clear the person's character and reputation. Further although the quashing of the findings will not restore the civic rights to the person affected yet whenever the necessity arises he can take up the position that he is not a "relevant person" within the meaning of the two laws because there would then be no finding of the Commissioners (which is one of the requisites of the definition of relevant person) against him. Hence the issue of the writ will not be futile.

Nor will the issue of the writ involve the questioning of the validity of the two laws which is something prohibited by Article 80(3) of the Constitution. The laws impose civic disabilities only on every relevant person – meaning (1) a person who has been found by the report of the Commissioners to have committed or aided or abetted in the commission of any of the acts specified therein and (2) named in the schedule to the laws. Both conditions have to be satisfied if the civic disabilities are to be imposed on any relevant person. If there are no findings by the Commissioners against such person he would not be a relevant person to whom the laws would apply. This involves only construction and applying the laws and does not touch the question of the validity of the laws in any manner whatsoever.

Cases referred to:

1. *De Mel v. M. W. H. de Silva (1949) 51 NLR 105*
2. *De Mel v. M. W. H. de Silva (1949) 51 NLR 282*
3. *Saif Ali v. Mitchel & Co. et al [1978] 3 All ER 1033*

4. *R. v. Electricity Commissioners (1924) 1 KB 171, 205*

5. *Fernando v. Jayaratne (1974) 7 8 NLR 123*

6. *Regina v. Criminal Injuries Compensation Board - ex parte Lain [1967] 3 WLR 348, 351, 358: [1967] 2 All ER 770 [1967] 2 QB 864, 882, 888.*

7. *Ridge v. Baldwin [1963] 2 All ER 66, 77, 80; [1964] AC 40; [1963] 2 WLR 935 (H.L.)*

8. *R. v. London County Council (1931) 100 L.J.K.B 760.*

9. *R. v. Aston University Senate ex parte Roffey [1969] 2 QB 538*

10. *Dalmia v. Justice Tendolkar AIR 1958 SC 538.*

11. *R v. Statutory Visitors, St. Lawrence Hospital Caterham ex p. Pritchard [1953] 2 All ER 766, 773.*

12. *Packer v. Packer [1954] L. R. P. 15, 22.*

13. *N. Q. Dias v. C. P. G. Abeywardena (1966) 68 NLR 409, 411.*

14. *Jayawardena v. Silva (1970) 73 NLR 289 (P.C.).*

15. *Pearlberg v. Varty [1972] 2 All ER 6.*

16. *Wiseman v. Borneman [1971] AC 297, 308.*

17. *In re Ratnagopal (1968) 70 NLR 409.*

18. *Ratnagopal v. The Attorney-General (1969) 72 NLR 145.*

19. *Fernando v. Jayaratne (1974) 78 NLR 123, 126, 130.*

20. *University Council of Vidyodaya University v. Linus Silva (1964) 66 NLR 505 (P. C.)*

21. *Vine v. National Dock Labour Board [1957] AC 488; [1956] 1 QB 674*

22. *R v. Criminal Injuries Compensation Board, ex parte Tong (1975) 3 All ER 678, 679 (Q.B.D.).*

23. *Ex parte Tong (1977) 1 All ER 171, 175 (AC).*

24. *Nakkuda Ali v. Jayaratne (1950) 51 NLR 457, 460, 463 (PC).*

25. *R v. Metropolitan Police Commissioner ex parte Parker (1953) 1 WLR 1150.*

26. *R v. Gaming Board for Great Britain, ex p. Benaim and Khaida [1970] 2 All ER 528, 533, [1970] 2 QB 417, 430.*

27. *Reg. v Liverpool Corporation, ex parte Tari Fleet Operators Association [1972] 2 Q.B. 299, 308, [1972] 2 WLR 1262.*

28. *In re Pergamon Press [1970] 3 All ER 535, 539.*

29. *Fisher v. Keane (1880) 49 LJR 11, 16; (1878) 11 Ch. D. 353.*

30. *Subramaniam v. Inspector of Police, Kankesanturai (1968) 71 NLR 204, 209, 210.*

31. *Schmidt v. Secretary of State for Home Affairs [1969] 2 Ch. 149.*

32. *R v. McArthur ex P. Cornish (1966) Tas. S. R. 157.*

33. *A. K. Ktipak v. Union of India AIR 1970 S. C. 150, 154.*

34. *R v. London Country Council ex p. Commercial Gas Co. (1895) II T. L. R. 337.*

35. *Jaganath Rao v. State of Orissa AIR 1969 SC 215.*

36. *Sammbu Nath Jha v. Kedar Prasad Singha AIR 1972 SC 1215.*

37. *Lockwood v. The Commonwealth and others (1953–1954) 90 CLR 177.*

38. *W. F. Conor v. G. Waldron [1935] AC 76.*

39. *Rola Co. (Australia) Pty Ltd. v. The Commonwealth (1944-45) CLR 185, 203, 204.*

40. *Allen Berry & Co. v. Vivian Bose AIR 1960 Punjab 86.*

41. *R v. Legislative Committee of the Church Assembly ex p. Haynes-Smith [1928] IK.B. 411, 415.*

42. *Dayaratne v. Bandara S.C. Application No. 924/77 – S.C. Minutes of 28.11.1978.*

43. *R v. Willington (London Borough) ex party Royce Homes Ltd. [1974] 2 All ER 643, 648.*

44. *R v. Hull Prison Board of Visitors [1978] 2 All ER 198, 202.*

45. *Maradana Mosque Trustees v. Mahmud [1966] 68 NLR 217.*

46. *R v. Paddington Valuation Officer [1966] 1 QB 380.*

47. *R v. Chief Immigration Officer [1969] 1QB 333.*

48. *R v. Greater London Council, ex p. Blackburn [1976] 1 WLR 550.*

49. *Russel v. Duke of Norfolk (1949) 1All ER 109, 118.*

50. *Re H.K. (an Infant) [1967] 2 QB 617; [1967] 2 W.L.R. 962; (1967) 1 All ER 226.*

51. *Field General Court Martial (1915) 18 NLR 334, 336.*

52. *Dankoluwa Estates Co. Ltd. v. The Tea Controller (1941) 42 NLR 197, 206.*

53. *Thassim v. Edmund Rodrigo (1947) 48 NLR 121, 127.*

54. *Grenier's Reports [1873] P. 125.*

55. *Bennet v. Chappel and another [1965] 3 All ER 180.*

56. *British Railways Board v. Pickin [1974] All ER 609, 618 (1975) AC 765.*

57. *Minister of Health v. Regem ex parte Yaffe (1931) All ER (Reprint) 343, 346.*

58. *Durayappah v. Fernando (1966) 69 NLR 265, 270 (PC).*

59. *Jayawardena v. Silva (1969) 72 NLR 25 – see Case No. 14.*

60. *Attorney-General v. Chanmugam (1967) 71 NLR 78.*

APPLICATIONS for Certiorari to quash findings of Commissions appointed under Commissions of Inquiry Act.

Nimal Senanayake with *K. P. Gunaratne, Sanath Jayatileke, Henry Jayamaha, (Miss) S. M. Seneratne, Saliya Mathew,* and *(Mrs.) Kusum Dissanayake* for petitioner in C. A. Appln. 669/78
C. Ranganathan, Q.C. for respondent.

E. D. Wickramanayake for petitioner in C. A. Appln. 695/78.
C. *Ranganathan, Q.C.* for respondent.

H. Mendis for petitioner in C. A. Appln. 766/78
J. W. Subasinghe with *G. F. Sethukavalar* and
K. Sivanandan for respondent.

H. L. de Silva with *E. D. Wickremanayake* for petitioner in C. A. Appln. 693/78.
K. N. Choksy with *K. Kanag-Iswaran, Laksman de Alwis, A. L. Britto Muthunayagam* and *Ronald Perera* for respondent.

V. S. A. Pullenayagam with *Neelan Tiruchelvam, (Mrs) S. Gnanakaran* and *N. Y. Casie Chetty* for petitioner in C.A. Appln. 880/78.
J. W. Subasinghe with *K. Sivanandan* for respondent.

Nimal Senanayake with *Nalin Abeynaike* for petitioner in C.A. Appln. 924/78.
C. Ranganathan, Q.C. with *K. Sivanandan* for respondent.

Walter Perera for petitioner in C.A. Appln. 1064/78.
C. Ranganathan, Q.C. with *K. Sivanandan* for respondent.

Nimal Senanayake for petitioner in C. A. Appln. 421/78
J. W. Subasinghe with *G. F. Sethukavalar* and *K. Sivanandan* for respondent.

E. D. Wickramanayake for petitioner in C.A. Appln. 750/78.
K. N. Chosky with *K. Kanag-Iswaran, Laksman de Alwis, A. L. Britto Muthunayagam* and *Ronald Perera* for respondent.

E. R. S. R. Coomaraswamy with *J. C. T. Kotalawela* and *R. K. Suresh Chandra* for petitioner in C. A. appln. 757/78.
K. N. Choksy with *K. Kanag-Iswaran, Laksman de Alwis, A. L. Britto Muthunayagam* and *Ronald Perera* for respondent.

E. D. Wickramanayake for petitioner in C. A. appln. 914/78.
K. N. Choksy with *K. Kanag-Iswaran, Laksman de Alwis A. L. Britto Muthunayagam* and *Ronald Perera* for respondent.

Nimal Senanayake for petitioner in C. A. appln. 805/78.

K. Shanmugalingam for petitioner in C. A. appln. 912/78.
K. N. Choksy with *K. Kanag-Iswaran, Laksman de Alwis, A. L. Britto Muthunayagam* and *Ronald Perera* for respondent.

Cur. Adv. vult.

October 24, 1979
VYTHIALINGAM, J,

Shortly after the present Government came to power, after the General Elections of May 1977, His Excellency the President of Sri Lanka by Warrants under the Public Seal of the Republic, appointed two one man Commissions under the Commissions of Inquiry Act (Cap. 393). One Commission which consisted of the former Chief Justice of Sri Lanka

Mr. G. P. A. Silva was required to inquire into and report on whether, in the course of the administration, by the Council or by any person appointed under any written law, of the affairs of each of the twelve Municipalities specified in the Schedule to the warrant, there had been –

(i) incompetence
(ii) mismanagement
(iii) abuse of power
(iv) corruption
(v) irregularities in the making of appointments of persons, or
(vi) contravention of any provisions of any written law

on the part of that Council or the person or persons aforesaid or of the Mayor or Deputy Mayor or any other person or persons and if so, the person of persons responsible for the same and the extent to which they were responsible and to make recommendations with reference to any of the other matters that had been inquired into under the terms of the warrant.

The other Commissioner Mr. S. W. Goonewardena was appointed by a similar warrant in identical terms to inquire into and report on the conduct of the administration of certain Urban Councils and towns other than Municipalities. Mr. G. P. A. Silva submitted his first interim report dated 7th December 1977, the second interim report dated 30th March 1978 and the Final report dated 5th June 1978. Mr. S. W. Goonewardena submitted his report dated 31st May 1978.

The Government thereafter passed Law No. 38 of 1978 and Law No. 39 of 1978 imposing civic disabilities on certain persons specified in the Schedules to the two Laws and against whom findings had been made by the respective Commissioners. The petitioners in these fifteen applications who are some of the persons named in the schedules and affected by the laws have applied for writs of Certiorari to quash the findings of the two Commissions relating to them, on the various grounds set out in their respective petitions.

These fifteen applications and four others originally came up before a Bench consisting of the President and Atukorale, J. As two questions of law were common to all the applications the Court directed that those two questions of law be argued as preliminary matters and accordingly this Bench of three judges was constituted. When these applications came up for argument it was found that in the case of four applications notices had not been served on the respondents or that some were noticed to appear on public holidays. We therefore directed that the notices be reissued and took the four applications off the list.

The two questions of law which were set down for determination by us are whether :—

(1) The reports and inquiries conducted by the two Commissioners under the provisions of section 2 of the Commissions of Inquiry Act can be reviewed or can be made the subject matter of review by this Court and whether they are amenable in whole or in part to a Writ of certiorari, and whether

(2) In view of Laws Nos. 38 and 39 of 1978 the issue of a Writ of Certiorari will in any event be futile and accordingly whether this Court will in law issue the Writ in the exercise of its discretion.

Although the argument at the hearing ranged over a very wide field these are the two matters which we are called on to decide and which we decide by this order and nothing more.

The main grounds of challenge are that the Commissioners failed to observe the principles of natural justice and/or acted in excess of authority and/or on the ground or errors of law on the face of the records. For the purposes of determining the two issues of law I shall presume that the allegations in the several petitions are true and that on the basis of those allegations the respective petitioners are entitled to the issue of the writ of certiorari. It may be that, when each of the individual petitions are inquired into, the allegations may turn out to be baseless or that even if true the Court will, on the facts and circumstances of the particular case, not issue the writ. But at this stage and for this preliminary purpose they cannot be challenged.

This is precisely what happened in the case of **De Mel Vs. M. W. H. de Silva.**[1] The issue as to the amenability of a Commission appointed under the very Act as in the instant case was referred as a preliminary issue to a Divisional Bench which held that it was competent for the Supreme Court to issue the writ of Prohibition. But when the matter came to be inquired into before a single Judge it was held that the facts set out in the petitioner's affidavit did not afford prima facie grounds for holding that the respondent had divested himself of jurisdiction by reason of bias and the application was accordingly refused (**De Mel v. M. W. H. de Silva**[2].

In the case of **Saif Ali Vs. Sydney Mitchel & Co. et al**[3] the plaintiff sued a solicitor who had represented him in an action which he had to abandon, for damages caused to him by the Solicitor's professional negligence. The Solicitor issued a third party notice against the barrister who had advised him in regard to the filing of the action, claiming to be entitled to be indemnified in respect of any damages payable to the plaintiff on the ground that the Barrister had been negligent in advising who should be joined as defendant to the plaintiff's claim and in settling the pleadings in accordance with that erroneous advice.

The Barrister applied for the third party notice and statement of claim to be struck out on the ground that they disclosed no reasonable cause of action. This was tried as a preliminary issue and the question was whether a Barrister enjoyed blanket immunity from a claim for damages in respect of all of his work or whether the immunity extended only to his conduct of the case in court and to those matters of pre-trial work which were so intimately connected with the conduct of the case in court, that they could fairly be said to be preliminary decisions affecting the way that case was conducted when it came to a hearing.

The case ultimately reached the House of Lords where Lord Wilberforce after stating the facts said at page 1036 "For the purposes of this appeal it has to be assumed that the factual basis for those allegations (as set out above) is correct, that there was some degree of negligence on the Barrister's part as regards one at least of the three matters, that such negligence resulted in damage and that the Solicitors are entitled to indemnity or contribution from the Barrister. All these assumptions may turn out to be incorrect if the matter goes to trial, but cannot be challenged at this stage".

The respondent's contention is that under the Commissions of Inquiry Act the two Commissions were only fact finding Commissions whose functions were merely to inquire into and make a report on the matters referred to in the warrant and that they did not have any legal authority to determine questions affecting rights of parties, in which case only, so it was argued, they would be amenable to the writ jurisdiction of this Court. Quite naturally much reliance was placed on the oft quoted formulation of Lord Atkin in the case of ***R. v. Electricity Commissioners***[4] where he said "whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs".

In the case of **Fernando v. Jayaratne**[5] Sharvananda, J. referred to this passage as a "classic definition of the scope of the writ" and pointed out that "this definition has been approved in its entirety by the House of Lords, the Privy Council and by our Supreme Court". However Lord Atkin's dictum is not a general definition to be applied indiscriminately to all cases whatever the facts and circumstances of the particular case may be. When one comes across a judicial formulation of a general legal principle it must be remembered always that the judge has in mind only the limited range of contexts of the particular case in which the problem arises.

Lord Atkin was dealing in that case with a scheme formulated by a statutory body and which affected the proprietary rights of parties and Lord Parker, C.J. pointed out in the case of **Regina v. Criminal Injuries Compensation Board – Ex parte Lain**[6] that "The definition was no wider

than was necessary for the purposes of that case and was not in my judgment intended to be an exhaustive definition. **H. W. R. Wade** says "Canonical though these words are they require much interpretation. At almost every point they understate the true position, the scope of remedies being in reality substantially wider. For instance the language is not apt to include review for error on the face of the record now a common ground for certiorari but one which courts had forgotten when Atkin, L. J. spoke". (Administrative Law 4th Ed. pp 332, 333).

S. A. de Smith states that "The proposition was cited with approval in many subsequent cases. However, it is neither uniquely authoritative nor self explanatory. In some situations it has offered a court uncertain guidance, in others it is unduly restrictive". (Judicial Review of Administrative Action 3rd edition S. 340). Over the years until comparatively recent times the courts had, owing to what Lord Reid says in **Ridge v. Baldwin**[7] was "a misunderstanding of a much quoted passage in the judgment of Atkin, L. J." given a very restricted interpretation to those words. Thus "legal authority" was said to mean statutory authority, "rights" to mean legally enforceable rights and the "duty to act judicially" to mean that there must be a superadded duty to do so.

Moreover Lord Atkin's words were spoken in 1924 when the dangers of what Lord Hewart called "The new Despotism" were not quite so obvious or felt. Today there is proliferation of governmental or other bodies having wide powers to make decisions, findings or determinations which may affect subjects grievously and can inflict widespread damage and pain of mind and suffering beyond measure. The powers exercised by such authorities are as much capable of abuse or misuse as the powers vested in statutory bodies.

This much was appreciated by Sharvananda, J. in **Jayaratne's case** (supra) when he said at page 130 "Arriving at a just decision is the aim of all inquiries of whatever nature. An unjust decision in an administrative inquiry in the context of a welfare state may have greater far-reaching effect than a decision in a quasi-judicial inquiry". To prevent this misuse and abuse of power by such bodies and to control and to keep them within their jurisdictions the courts have now, particularly during the last 25 to 30 years, given to each of these terms a wider meaning. Sharvananda, J. himself pointed this out when he said at page 132 "These recent decisions have thus advanced the frontiers of natural justice. To prevent abuse of power by administrative bodies courts are gradually evolving guidelines based on principles of natural justice, for the exercise of their powers". They did so for the purpose of exercising their writ jurisdiction or to issue declarations and injunctions.

An examination of the process by which this has been done and to see how Lord Atkin's formula has been modified is best done by considering each of the four parts into which Slesser, L. J. divided it in the case of **R Vs. London County Council,** [8] namely:—

that whenever any body of persons (1) having legal authority
(2) to determine questions affecting the rights of subjects, and
(3) having the duty to act judicially
(4) act in excess of their legal authority

they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.

Having Legal Authority

In this context generally "legal authority" means statutory authority or authority under the common law. But this has now been extended to include acts of public authorities who are not vested with any power under any statute or under the common law. In the case **Ex parte Lain** (supra) it was argued that the Criminal Injuries Compensation Board was not a body of persons having "legal authority" in the sense of having statutory authority, as the Board had been established by the executive in terms of a White Paper which had been adopted by Parliament. The Court of Appeal rejected this argument and held that it had legal authority to act. Mr. Choksy pointed out that the Court of Appeal's decision in that case was based on the fact that the Board had been set up by the executive in the exercise of the prerogative and that therefore it had a legal basis.

Dealing with this aspect of the Court of Appeal's decision **H. W. R. Wade** (ibid) says "Prerogative power is properly speaking legal power which appertains to the Crown but not to its subjects . . . Although the courts often use the term prerogative in this sense, they do not always do so. For example, the Court of Appeal has described the administrative scheme for compensating victims of violent crime as established 'under the prerogative'. The scheme was set up by executive action without statutory authority and the compensation distributed by the Criminal Injuries Compensation Board (out of moneys voted by Parliament) consists technically of ex gratia payments. But anyone may set up a trust or other organisations to distribute money and for the government to do so involves no prerogative power; it only involves the liberty possessed by anyone who has the disposal of necessary funds. A true prerogative power such as the power to declare war or to create a peer involves something which no subject may do" (pp. 204, 205).

The writ also has been held to be available against the proceedings of University disciplinary authorities not resting on any statutory basis – **R v Aston University Senate ex p. Roffey**[9] . In that case the University itself was established by Charter under the Royal Prerogative. It is however unnecessary to consider this matter at length, because the two Commissioners in the instant applications undoubtedly had "legal authority". They were

appointed by the President under the powers vested in him by statute and the two Commissioners themselves exercised powers and functions vested in them by the Act though their duty to investigate and report emanated from their appointment by the President.

To determine questions affecting the rights of subjects

In view of the arguments addressed to us it is convenient to consider this requirement under two heads – (a) To determine questions and (b) affecting rights of subjects. It was submitted that the Commissioners were vested with power only to inquire into and report on the matters set out in the warrant. It was argued that nowhere in the Act were they given power to make findings or determinations. It was further submitted that the fact that the warrants required the two Commissioners to transmit before the specified dates (later extended) their reports "setting out the findings of your inquiries and your recommendations" or that in their reports the Commissioners themselves refer to their "findings" would not show that they were vested with any legal authority to make findings or determinations.

It would therefore be necessary to examine the provisions of the Act and the warrant to see what the Commissioners were empowered to do and the nature of the inquiries and report they were required to make. But before doing so one may be permitted a general observation. Under the Commissions of Inquiry Act even in the case of inquiries in the most general terms, the terms "inquiry" and "report" necessarily implies the making of findings and decisions of some sort on relevant matters. For example, where a commission is required to inquire into the working of a particular department and to make recommendations for its more efficient functioning the Commissioners would necessarily have to examine the present working of the department and decide whether the methods employed were conducive to its efficient functioning and then make recommendations for its improvement.

Indeed in the case of **Dalmia v. Justice Tendolkar**[10] S. R. Das, C. J. dealing with inquiries under the Indian Commissions of Inquiry Act pointed out at page 546 "An inquiry necessarily involves investigations into facts and necessitates the collection of material facts from the evidence adduced before or brought to the notice of the person or body conducting the inquiry and the recording of its findings in its report cannot but be regarded ancillary to the inquiry itself for the inquiry becomes useless unless the findings of the inquiring body are made available to the Government which set up the inquiry".

Section 2(1) of our Act sets out that "Whenever it appears to the Governor-General to be necessary that an inquiry should be held and information obtained as to –

(a) the administration of any department of Government or of any public or local authority or institution; or

(b) the conduct of any member of the public service; or

(c) any matter in respect of which an inquiry will, in his opinion, be in the interests of the public safety or welfare,

the Governor-General (now the President) may, by warrant under the Public Seal of the Island, appoint a Commission of Inquiry consisting of one or more members to inquire into and report upon such administration, conduct or matter. . . . . "

In the exercise of this power commissions have been appointed to inquire into and report on matters ranging, inter alia, from the incidence of ragging of freshmen in the University (Sessional Paper No. XI of 1975) and the circumstances in which an undergraduate in Peradeniya Campus of the University came to be shot by the Police (Sessional Paper No. 1 of 1977) to whether any member of the Municipal Council of Colombo accepted or solicited or gave or promised to give, a bribe. **De Mel v. M. W. H. de Silva.** (1) All these commissioners did make findings or determinations on questions which were relevant to their inquiry and report.

As Parker, J. said in the case of **R. Vs. Statutory Visitors Caterham** (11) "There must be a decision or determination" for the writ to be available and an examination of the Warrants by which the two Commissioners were appointed, the terms of which I have reproduced in the earlier part of this judgment, it is quite clear that the two Commissioners were enjoined to determine whether in the course of the administration of any of the Councils specified, there had been :—

(1) incompetence, mismanagement, abuse of power, corruption, irregularities in the making of appointments of persons, or contravention of any provisions of any written law and if so

(2) the person or persons responsible for the same and

(3) the extent of their responsibility.

These are all questions for the determination of which the President is empowered under the Act to appoint Commissions. The Commissioners would have to collect and correlate the facts, assess and evaluate the evidence and come to findings or determinations in respect of persons responsible for the commission of the acts set out in (1) above and in regard to the extent of their responsibility. It is inconceivable how else they could make a report

on these matters without coming to findings or determinations against persons responsible for the same.

In regard to one at least of these matters namely, corruption in the sense of accepting or giving a bribe it was conceded that the Commissioners would have to come to specific findings or determinations against persons. I fail to see how in respect of the other matters also the Commissioners can make a report without comming to findings and determinations against the persons responsible for the acts mentioned. There is no magic in the word 'report'. The question is whether some question is being determined to some person's prejudice. It is of course possible for a Commission to be appointed to inquire into and report on matters in respect of which it would not be necessary for findings or determinations to be made against any persons. But this is not such a case.

Affecting rights of subjects

The main argument in the case has centred round the question as to whether these decisions or determinations "affect the rights of subjects". It was submitted that the decisions should either of their own force proprio vigore, or as a necessary and integral part of a proceeding when complete, affect rights of subjects. It was argued that the decision must be a step in a statutory scheme existing at the time the decisions were made to affect rights. For this purpose while Mr. Choksy was not concerned with whether one gave a restricted or wide meaning to the term "rights" Mr. Renganathan submitted that rights here meant legally enforceable rights. It was argued that none of the findings or determinations of the two Commissioners either of their own force or as a step in a statutory process affected the rights of subjects.

One of the matters which the two Commissioners were required to inquire into and report was whether there had been corruption in the administration of the affairs of the Councils and if so, the person or persons responsible for the same. Corruption is wide enough to include bribery and in fact the M. W. H. de Silva Commission was appointed to inquire into the incidence of bribery under this head. In that case the supervening legislation The Colombo Municipal Council Bribery Commission (Special Provisions) Act No. 32 of 1949 applied only to that Commission. But now the Public Bodies (Prevention of Corruption) Act (Cap. 258) makes these provisions applicable to any Commission of inquiry appointed under the Act. So that if the two Commissioners or either of them did make findings of corruption in the sense of accepting or giving of a bribe against any person who is a member of a public body then in terms of the decisions of the Divisional Bench in **De Mel v. M. W. H. de Silva**[1] (supra) the Commissioners would be amenable to the writ jurisdiction of this Court.

It was stated that neither of the Commissioners had made findings of bribery against any such person. That may or may not be so. It may be that

even though there is no specific finding of bribery nevertheless the finding that a person was guilty of corruption may necessarily imply that he was guilty of bribery. These are matters which will have to be gone into when the facts and circumstances of each particular case are taken into consideration at the hearing into the respective applications. Here we are only concerned with the law generally and not with the facts and circumstances of particular cases. So that on this ground alone the Commissioners would be amenable to the writ jurisdiction of this Court.

But it is necessary to deal with the position apart from this consideration as well. It was submitted that apart from the M. W. H. de Silva Commission in which case legal effect affecting rights of subjects was given to its findings by statute it had never been held that the findings of a Commission under the Act affected rights of subjects. For one thing the fact that it had never been done does not necessarily mean that it cannot ever be done. I would in this connection quote with respectful approval the observations of Lord Denning M. R. in regard to a similar argument in the case of **Packer v. Packer** (12) "What is the argument on the other side? Only this – that no case has been found in which it had been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before we shall never get anywhere. The law will stand still whilst the rest of the world goes on and that will be bad for both".

For another, much depends on the facts and circumstances of each case and it will be necessary to examine the decisions in each of those cases relied on. In the **M. W. H. de Silva case** Gratiaen, J. in making the reference to a Divisional Bench said that if matters had stood in this way, that is without the supervening legislation the functions which the respondent was charged could not properly have been described as judicial or quasi-judicial functions over which this Court could exercise any controlling jurisdiction. And in the Divisional Bench Wijeyawardena, C. J. said "It is true that the respondent is not expected to make any order in his report affecting the legal rights of the petitioner."

But this was conceded by Counsel for the petitioner and there was therefore no argument or consideration of the question at all. It was argued that Counsel of the eminence of the late Mr. H. V. Perera, Q.C. would not have made such a concession if it were otherwise. But it was not necessary for his purpose to make any submissions on this question as his main argument in the case on which he succeeded, was that in view of the subsequent legislation the respondent's functions had become judicial or quasi-judicial functions. Indeed Wijeyawardena, C. J. himself pointed out that it was unnecessary for the Commissioner to make any report affecting the rights in view of the subsequent legislation. I do not therefore find the observations in that case to be a satisfactory guide for the determination of the issues in these applications.

The next case relied on was the case of **N. Q. Dias v. C. P. G. Abeywardena.**[13] In that case a writ of Prohibition was sought against a Commissioner appointed under the Act to inquire into alleged unlawful interception of telephone messages and to make a report inter alia, as to the persons responsible for such unlawful interception or by or to whom the contents of messages so intercepted were divulged, on the ground of bias. The application was refused on the ground that the Commissioner's findings would have no legal effect on the rights of persons against whom findings were made.

The basis for the decision was stated by H. N. G. Fernando, S. P. J. as follows: "Let me suppose that the Commissioner in the instant case makes a report in which is contained a determination that X intercepted certain telephone messages at the instigation of Y and divulged the contents of the messages to Z. There is literally nothing in the Commissions of Inquiry Act by reason of which a determination can create, affect or prejudice the rights of X, Y or Z. Even though the finding which the Commissioner is required to reach according to his terms of reference is that a person unlawfully intercepted a telephone message, that finding would not be made in terms of the Telecommunication Ordinance, under which the function of determining whether there has been such unlawful interception is committed solely to the ordinary Courts."

In other words, if a person against whom a finding is made by the Commissioner that he unlawfully intercepted a telephone message, then if the person is charged in a Court of law in respect of that offence that finding would not be proof that he was guilty. It is for the Court to arrive at a verdict on the evidence led before it. It is the same as when the Principal Collector of Customs elects which of two penalties he will impose on a person who violates the Customs Ordinance. The election by itself does not affect the rights of the individual concerned. It is only when he is sued for the amount that his rights would be affected and then he would have a full opportunity to place his case before Court – **Jayawardena v. Silva**[14]

Similarly the position is the same when the Commissioner of Inland Revenue grants leave to an inspector to raise an assessment on being satisfied that there are reasonable grounds for suspecting loss of tax resulting from neglect, fraud or wilful default. At that stage the assessee has no right to be heard, for when the assessment is made he can appeal against it and raise all matters which he could have raised at the earlier stage, for Parliament did not require a plurality of hearings – **Pearlberg v. Varty**[15].

For as Lord Reid observed in **Wiseman v. Borneman**[16] "It is, I think, not entirely irrelevant to have in mind that it is very unusual for there to be a judicial determination of the question whether there is a prima facie case. Every public officer who has to decide whether to prosecute or raise proceedings ought first to decide whether there is a prima facie case but no one supposes that justice requires that he should first seek the comments of

the accused or the defendant on the material before him". However it was repeatedly pointed out in that case that the fact that a decision is only that a prima facie case has been made out is not itself a reason why both parties should not be heard. It is a significant factor and would depend on the facts and circumstances of the particular case.

Reliance was also placed on an observation made by H. N. G. Fernando, C. J. in the case of **In Re Ratnagopal**(17). In that case the respondent was fined for contempt of a Commissioner appointed under the Act in that he refused to be sworn and to answer questions. The main issue in that case was as to whether the appointment of the Commissioner was *ultra vires* the power conferred by the Act. The Supreme Court held that it was not *ultra vires*. In the course of his judgment H. N. G. Fernando, C. J. said at page 422 "Since the objection of *ultra vires* has to be rejected for the reasons above stated, it is not necessary to state my reasons for agreeing with certain other answers to the objections which Crown Counsel also submitted. One such answer was that the purpose of the Commission which is merely to inquire into and report on certain matters, does not involve the exercise of judicial or quasi-judicial functions or even of executive power; that being so, any failure of the Commission to duly carry out its purpose is a subject for complaint to the Governor-General and not to the Courts". In the circumstances I cannot regard this observation as an authoritative decision that in every case a Commission appointed under the Act does not make findings or decisions which affect the rights of subjects. In an appeal to the Privy Council it was held that the appointment was *ultra vires*. But the Privy Council said nothing about this observation of H. N. G. Fernando, C. J. – **(Ratnagopal v. The A. G.**(18).

The last of the local cases under the Act relied on by the respondents and one which was the subject of much comment and discussion at the argument was that of **Fernando v. Jayaratne**(19). In that case a Commission was appointed under the Act to inquire into and report on the activities of the Fisheries Corporation and inter alia, on whether any employee had directly or indirectly by any act, omission or neglect of duty, impropriety or misconduct caused any loss to the Corporation and if so, the extent of the loss so caused. In his report the Commissioner made certain adverse findings against the petitioner in respect of his work as an employee and held that "the responsibility for the loss to the Corporation on the basis of further construction of the cold room or rooms to make up for the shortfall which might exceed Rs. 500,000/- would have to be shared between Mr. Eric Fernando (the petitioner) and Mr. Dias Abeysinghe".

Thereafter the petitioner's employment with the Corporation was terminated "inasmuch as the Board of Directors of the Corporation have, in view of the adverse findings contained in the respondent's report lost confidence in the petitioner". The petitioner moved the Supreme Court for a Mandate in the nature of a writ of Certiorari to quash the findings of

the Commissioner as the findings against him constituted the cause of unjustifiable and premature termination of his services and on the ground that the rule of natural justice of *audi alteram partem* had been violated. The Supreme Court refused the application holding that the Commissioner was under no duty to act judicially, and that its decision though it affected the petitioner "grievously" did not affect any rights of his.

In so far as the decision of the Supreme Court that no rights of the petitioner in respect of his employment with the Corporation, were affected, is concerned, it was if I may say so with great respect, correct and unexceptionable. The petitioner's employment with the corporation was on a contractual basis and the relationship was one of master and servant. His rights in respect of his employment were under the contract and none other. Under the contract it was terminable on three month's notice or on payment of three months' salary in lieu of such notice. Admittedly he had been paid three months' salary in lieu of notice and his services had been terminated in terms of his contract. The termination could have been for any reason or none at all. So that the question as to whether the reason stated by the Corporation was right or wrong was immaterial. If there was a breach of contract the petitioner could have sued for damages. There the matter should have ended.

The law in regard to this was clarified by Lord Reid in **Ridge v. Baldwin**(7) (supra) where he said at page 71, "The law relating to master and servant is not in doubt. There cannot be specific performance of a contract of service and the master can terminate the contract with his servant at any time or for any reason or for none. But if he does so in a manner not warranted by the contract he must sue for damages for breach of contract. So that the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence".

This question arose directly in the case of the **University Council of The Vidyodaya University et al v. Linus Silva** (20). It was there held that a teacher who had an appointment with the University is in the ordinary legal sense a servant of the University. It was not therefore open to him to contend that in terminating his appointment the University Council were bound to act judicially and should therefore have given him an opportunity to be heard after being made aware of the grounds upon which the termination of his appointment was to be considered. It was held by the Privy Council that in the circumstances the remedy of certiorari was not available to such a teacher.

In that case Lord Morris of Both-y-Gest pointed out that the House of Lords had approved the dissenting judgment of Jenkins, L. J. in the Court of Appeal in **Vine v. National Dock Labour Board**(21) in the course of which he said "But in the ordinary case of master and servant the repudiation or the wrongful dismissal puts an end to the contract and the

contract having been wrongfully put an end to, a claim for damages arises. It is necessarily a claim for damages and nothing more. The nature of the bargain is such that it can be nothing more". So that the petitioner had no right to his employment with the Fisheries Corporation and the adverse findings against him by the Commissioner cannot therefore be said to have affected any right of his.

However this was not the basis on which the judgment of the Supreme Court proceeded in that case. Perhaps because of the way in which the case was presented and argued Sharvananda, J. with whom Tennekoon, C. J. and Malcolm Perera, J. agreed, went on to consider the meaning of the term "right" in Lord Atkin's formulation and the question as to whether the Commissioner in that case had a duty to act judicially. He held that the "right" here meant a legally "enforceable right" for he said at page 129, "The report of the respondent has no binding force, it is not a step in consequence of which legally enforceable rights may be created or extinguished".

In all the earlier cases referred to above this had been assumed and nearly all of them were decided before the decision in **Ex parte Lain**(6) (supra). Jayaratne's case (19) was the first case in which this decision was considered. Sharvananda, J. rejected what he called the "gloss" on the well known definition of Atkin, L. J. suggested by Ashworth, J. in that case "by omitting the words 'the rights of' so that the phrase in which these words occur would read 'questions affecting subjects' ". He stated also that "It is to be noted that the other two judges, i.e. Lord Parker and Diplock L. J. did not associate themselves with Ashworth, J. in the suggested revision but went into the question whether the rights of subjects, predicated in Atkin, L. J' s definition were legally enforceable or justiciable rights or not".

If I may say so with the utmost respect I think Sharvananda, J. was mistaken in this. In a passage in his judgment in **ex parte Lain**(6) which has since been often quoted Lord Parker, C. J. used precisely the same language as Ashworth J. when he said, "We have as it seems to me reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has **to determine matters affecting subjects** provided always that it has a duty to act judicially. Looked at in this way the Board in my judgment comes fairly and squarely within the jurisdiction of this Court". The words I have emphasised clearly indicate Lord Parker's agreement with the view expressed by Ashworth, J.

It is true that Diplock, L. J. did not go quite so far. But he was quite liberal in finding a legal effect on rights. For he said at page 888 "True it is that a determination of the Board that a particular sum by way of

ex gratia payment of compensation should be offered to an applicant does not give the applicant any right to sue either the Board or the Crown for that sum. But it does not follow that a determination of the Board in favour of an applicant is without any legal effect upon the rights of the applicant to whom it relates. It makes lawful a payment to an applicant which would otherwise be unlawful".

In the case of **R. v. Criminal Injuries Compensation Board — Ex Parte Tong**(22) Wien, J. succinctly stated the ratio decided in that case as follows, ". . . . . where it was held that the Board was amenable to the supervisory jurisdiction of the High Court exercised by certiorari in that it was a body of persons of a public as opposed to a purely private character, having power to determine matters affecting subjects and a duty to act judicially". Certiorari was refused on another ground. The Court of Appeal however set aside the judgment and issued the writ.

In regard to the nature of the functions of the Board Lord Denning, M. R. said in **ex parte Tong**(23) "There remains however the question whether this Court can interfere. Can it issue an order of certiorari so as to quash the decision of the Board refusing compensation and thus in effect say that compensation should be paid? At one time there would have been much debate about this. The person who is injured by a crime of violence has no legal right to compensation. Any payment to him is *ex gratia*. The Board's awards have no legal backing. They cannot be enforced by law. They are in truth part and parcel of an administrative system. But now by a series of important decisions it has been held that the High Court has a supervisory jurisdiction over the Board which it can exercise by way of certiorari". He then went on to refer to these cases, but it is unnecessary for me to consider them.

The decision in this case is of great importance in determining whether "rights" here have to be legally enforceable rights. Here the Board refused to make an award an the applicant had no right to receive any compensation. So that in this case it cannot be said that any right of the applicant was affected by the refusal. The decision cannot therefore be explained on the basis of what Diplock, L. J. said in **ex parte Lain** (6) that the right is affected because the decision of the Board renders lawful a payment which would otherwise be unlawful. It can only be explained on the basis that the decision affects subjects adversely as Ashworth, J. and Lord Parker, C. J. put it.

Then there are the licensing cases. At one time it was said that a licence was a privilege and that a decision to grant or revoke such a licence was not a decision affecting rights — See **Nakkuda ali v. Jayaratne** (24) and **R V. Metropolitan Police Commissioner Ex Parte Parker.**(25) But today as Lord Denning, M. R. pointed out in **R. v. Gaming Board**(26) "they are no longer of authority for any such proposition," and **Halsbury's Laws**

of England 4th Ed. Vol. 1 para 83. Note 5 points out that the two decisions are open to serious doubt."

The length to which the Courts are prepared to go in this regard is indicated by the decision in **Reg. v. Liverpool Corporation ex parte Taxi Fleet**(27). In that case the Corporation sought to increase the number of taxi cab licences without hearing the Fleet Operators' Association despite an undertaking that it would not do so without affording them an opportunity to be heard. The Association had no legal right which was affected by the decision to increase the number of taxi cabs. Lord Denning said at page 308 "It is perhaps putting it a little high to say that they are exercising judicial functions. They may be said to be exercising an administrative function. But even so, in our modern approach they must act fairly, and the court will see that they do so"

Then there is the case of **In Re Pergamon Press**(28). In that case the Board of Trade ordered an investigation under Section 165(b) of the Companies Act into the affairs of a public company. The matter came up to the Court of Appeal by way of an appeal. But that makes no difference as the Judges considered the functions and powers of the inspectors and concluded that they had a duty to act fairly and so to give the parties affected a hearing. In regard to the functions of the Inspectors Lord Denning said at page 539 "It is true, of course, that the inspectors are not a court of law. Their proceedings are not judicial proceedings . . . . . They are not even quasi-judicial, for they decide nothing, they determine nothing. They only investigate and report . . . . . They do not even decide whether there is a prima facie case . . . . . "

Mr. Choksy submitted that the report in that case either of its own force or as a step in a statutory process affected rights. For he pointed out that under the Companies Act it may expose persons to criminal prosecutions or civil actions, or bring about the winding up of the company or be used itself as material for the winding up. But in dealing with the effect and repurcussions of the report Lord Denning pointed out in the same page "But this should not lead us to minimise the significance of their task. They have to make a report which may have wide repurcussions. 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." Then, after dealing with the consequences which might flow under the Act he continued, "Seeing that their work and their report may lead to such consequences, I am clearly of opinion that the inspectors must act fairly". He did not base this conclusion solely on the consequences which could flow from the Act but on that as well as the effect the report would have on the character and reputation of the persons concerned."

This is not something new. For much the same thing was said more than a hundred years ago by Jessel, M. R. in the case of **Fisher v. Keane** (29). That was a case in which the Committee of a private club expelled a member for alleged misconduct without giving him a hearing. In setting aside their decision Jessel, M. R. said at pages 362, 363 "They ought not as I understand it according to the ordinary rules by which justice should be administered by committees of clubs or by any other body of persons who decide upon the conduct of others to blast a man's reputation for ever, perhaps ruin his prospects for life without giving him an opportunity of defending or palliating his conduct".

The two Commissioners in the present applications had to inquire into and report on the question as to whether any of the persons specified were guilty of incompetence, mismanagement, abuse of power, corruption, irregularities in the making of appointments of persons or contravention of any provisions of any written law. The persons concerned were all public men, one a very important Minister in the former government who, at one and the same time held the portfolios of Finance, Justice and Local Government, Mayors, Deputy Mayors and members of municipalities, Chairmen, Vice-Chairmen and members of other local bodies and public Officers. To them, more so perhaps than to others, their integrity, character and reputation are all important. Any adverse decision on those matters would undoubtedly affect their character, reputation and integrity, blast their reputation for ever and ruin their future careers. So that apart from the loss of their civic disabilities under the two laws, the determination of the two Commissioners would grievously affect these persons, of their own force, proprio vigore.

The fact that findings and determinations made by Commissioners appointed under the Act may adversely affect persons is recognised by the Act itself. For section 16 provides that "every person whose conduct is the subject of inquiry under this Act, or who is in any way implicated or concerned in the matter under inquiry shall be entitled to be represented by one or more advocates or proctors at the whole of the inquiry; and any other person who may consider that it is desirable that he should be so represented may, by leave of the Commission, be represented in the manner aforesaid". In the latter case the right to representation is at the discretion of the Commissioner. But in the former it is a right expressly conferred on such persons.

It was submitted that this section only gave the persons concerned a right to be represented and that if they did not choose to avail themselves of the right there was nothing that anyone could do about it. It was argued that there was no duty cast on the Commissioners to notice them or to inform them that their conduct was being investigated. I regret I am unable to agree with this submission. Whatever the position may be in regard to the second category of persons, certainly in regard to the first category of persons

the section indicates that there is a duty cast on the Commissioners to notice the persons whose conduct is being inquired into as well as the persons who are in any way implicated or concerned in the matter under inquiry and of the nature of the inquiries that are being made.

How else are such persons to know that they are the subject of inquiry and that adverse findings may be made against them? Newspapers may or may not report such proceedings. Even if they do, the persons concerned may not read them. Moreover the Warrant may include a direction as to whether the inquiry or any part thereof shall or shall not be held in public. In the instant cases the Warrants do contain such a direction. Where such inquiry or part of an inquiry is held in camera there is no way in which persons concerned can know that they are the subject of such inquiry and so avail themselves of the right expressly conferred on them by the section.

In regard to this right to representation in a different context Weeramantry, J. said in the case of **Subramaniam v. Inspector of Police, Kankesanturai**(30) "It needs little reflection to realise that the right we are here considering is a many faceted one, not truly enjoyed unless afforded in its many varied aspects . . . . . Hence the right does not mean merely that an accused person is entitled in theory to be defended by a pleader but also that he must enjoy all those concomitant privileges without which the right is reduced to a mere cypher" and "that the lack of effective opportunity for the exercise of the right which it assures should be viewed as a denial of the right itself". One essential requisite for the exercise of this right is that the person concerned should be made aware that he is the subject of inquiry. If, of course, after he has been afforded the opportunity to be represented he neglects to assert his right to representation, he cannot thereafter complain about it. If therefore the Commissioners or either of them had failed to notice such persons that their conduct was being inquired into or that they are concerned or implicated in the matter under inquiry and/or failed to afford such persons the opportunity to be represented then they would be amenable to the Writ jurisdiction of this Court.

This aspect of the matter or the effect of the findings or determinations on the character and reputation of the persons concerned did not receive any consideration at all in the earlier cases because of the basic assumption that rights affected should be legally enforceable rights and that there must in addition, be a superadded duty to act judicially. But in **Jayaratne's case**(19) (Supra). Sharvananda, J. after quoting the observations of Lord Denning, M. R. in the **Pergamon Press case** (28) which I have quoted above said at page 130 "These observations are apposite to the report of a Commissioner appointed under the Commissions of Inquiry Act. He must come to his conclusions by a process consistent with rules of natural justice after informing the party of the case against him".

At page 125 he stated that the petitioner had ". . . . . a real grievance and has been affected grievously by the respondent's admitted failure to observe the principles of natural justice by affording the petitioner an opportunity of contradicting or controverting the allegations against him before he made his finding against the petitioner . . . ." On this aspect of the matter he concluded by saying at page 130 "In the light of the above observations, in my opinion, the respondent has not acted fairly, according to law. He has failed to give the petitioner notice of the allegations against him and an opportunity of answering the case against him before he reported him to the Governor-General. There was no due inquiry as far as the petitioner was concerned and hence the report made by the Respondent against the petitioner cannot have any value".

And yet he refused the application for the writ because no legally enforceable right of the petitioner was affected and because the Commissioner had no duty to act judicially, although he had a duty to act fairly and observe the rules of natural justice. As Lord Parker, C.J. pointed out in **ex parte Lain**(6) *(supra)* " . . . . . I cannot think that Atkin, L.J. intended to confine his principles to cases in which the determination affected rights in the sense of enforceable rights." As Halsbury points out "The term rights is to be understood in a very broad sense". (Laws of England 4th Ed. Vol. 1 para 83.Note 5).

Rights in this case are not to be confined to the jurisprudential concept of rights to which correlative legal duties are annexed. They comprise an extensive range of legally recognised interests the categories of which have never been closed. They would include rights in property, personal liberty, status, immunity from penalties or other fiscal impositions, reasonable expectation of preserving or even acquiring benefits (licences, monetary awards) and interests in preserving one's livelihood or reputation. This is by no means exhaustive. As Lord Denning, M.R. pointed out in **Schmidt v. Secretary of State for Home Affairs**(31) "It all depends whether he has some right or interest or I would add some legitimate expectation of which it would not be fair to deprive him without hearing what he has to say".

In one Tasmaniam case **R v. McArthur ex p. Cornish**(32) which is referred to in **S. A. de Smith** (Judicial Review of Administrative Action, 3rd Ed. 157, Note 75) a Superintendent of Police who was empowered to order licencees to stop serving alcohol to a habitual drunkard on the basis of information supplied, issued orders in respect of C upon information supplied by C's wife. It was held that the order was void because C was denied the opportunity to rebut the accusation. In other words, protection was given to the right to drink which could not be taken away without observing the principles of natural justice. So that in the modern view of the matter if as Sharvananda, J. did hold that the respondent was under a duty to act fairly and to observe the principles of natural justice and had failed to do so and his decision had "grievously affected" the petitioner it was eminently a case in which the writ

of certiorari should have issued to get a finding, which had "no value" as against the petitioner, out of the way.

The respondents also placed great reliance on the decision in **R v. Statutory Visitors St. Lawrences Hospital Caterham. ex parte Pritchard**[11]. In that case the court refused to grant the remedy to quash a mere report being the report of the visitors of a hospital as to the need for continued detention of a mental defective. All they were required to do was to see the patient, to ascertain the means of care and supervision which would be available if she was discharged, and to state whether in their opinion, the patient was a proper person to be detained in her own interest in the institution. They make no decision or determination in regard to this. They only express an opinion and make a recommendation. The power to order the continued detention rested in another body, the Board of Control, and for this purpose they would take into consideration the opinion of the visitors. It was no more then a piece of evidence which they were required to obtain. They could take into consideration the report of another medical officer if such was placed before them by the patient or guardian.

Moreover the Act itself differentiated between a mere report and a decision which the visitors had the power to make. This was pointed out by Parker, C. J. at page 773. "Parliament itself has pointed out it seems to me, the contrast between the duties of the visitors under section 5(11) (2) which is the case here and section 11(3). Section 11(3) is clearly dealing only with the case of re-consideration when a patient comes of age and enables the visitors to arrive at a decision. Parliament used the word 'decision' and the visitors can order the discharge or the continued detention of the patient, and in the event of the latter decision there is a right of appeal to the board. When they are acting under section 5(11) (3) the visitors are clearly coming to a decision, whereas under section 5(11) (2) all they have to do is to report to the Board of Control whether in their opinion the defective is still a proper person to be detained in his own interests in an institution". The decision therefore cannot help the respondent as the report was merely an expressior of opinion and does not affect the patient.

In contrast is the decision of the Supreme Court of India in the case of **A. K. Kripak v. Union of India**[33]. In that case a selection board appointed for this purpose prepared a list in order of preference for appointment to the Indian Forest Service. In terms of the rules this list had to be sent to the Union Public Service Commission along with the recommendation of the Minister and the records of all other eligible officers of State. The Commission would then forward its recommendations to the Government. The regulations provided that the officers recommended by the Commission should be appointed subject to the availability of vacancies in the State cadre. It will be seen that virtually it was the Commission which selected officers for appointment and that the selection board's functions were purely recommendatory and was not binding on the Commission which could base its findings

on the observations of the Minister and on a consideration of the records of the other eligible officers.

The petitioner challenged the selections made by the selection board on the ground of bias of one of its members. It was held that bias was established and the selection list was quashed. In dealing with the submission that the selection board was not required to decide about any right Hegde J. pointed out at page 157 "Looking at the composition of the board and the nature of the duties entrusted to it we have no doubt that its recommendations should have carried considerable weight with the U. P. S. C." Great weight was placed on the observations of Parker, C. J. in **ex parte Lain**(6) and the passage in his judgment commencing with "With regard to Mr. Bridge's second point I cannot think that Atkin, L. J. intended to confine his principles to cases in which the determination affected rights in the sense of enforceable rights" was quoted in **extenso.**

Similarly also a report may be quashed if it is substantially a decision rather than a mere recommendation, e.g. where the Act provides that it shall be final – **R v. London County Council ex p. Commercial Gas Co** (34). In that case an adverse report made by a Gas tester against a Gas company which might lead to an order against it by the local authority was quashed on the ground that the Company had not been given an opportunity to comment on the report.

Mr. Choksy also cited several cases from other jurisdictions to show that the reports of similar commissions have been held to be mere reports and not findings or determinations affecting rights. From India he referred to **Dalmia's case**(10) (supra) **Jaganath Rao v. State of Orissa**(35) and **Sammbu Nath Jha v. Kedar Prasad Singha**(36), the Australian case of **Lockwood v. The Commonwealth and others**(37) and the decision of the Privy Council in the Canadian case of **W. F. Conor v. G. Waldron** (38).

In the three Indian cases as well as in the Australian case the question for decision was whether the bodies concerned were exercising judicial power or not. For the challenge in those cases was on the ground of the *vires* of the Act itself or of the appointment of the bodies. For this purpose they had to examine the powers and functions of the bodies concerned to see if they were performing judicial functions as a Court would. It was held that they were not because they had no authority to determine questions affecting rights in the way in which a Court decides. They were not concerned with the question as to whether the bodies concerned had a duty to act judicially.

The two are entirely different for the former is a special case of the latter. The term rights in the two cases would have different connotations. This distinction was clearly brought out by Rich, J. in the case of **Rola Co. (Australia) Pty Ltd. v. The Commonwealth** (39), where he said " . . . . . it is

important to remember that judicial power and power in the exercise of which there is a duty to act judicially are two different things. The former is a special case of the latter. If a person is invested with power not to create legal rights or to impose new legal duties or liabilities but to determine as between disputants whether one of them possesses, as against the other, some already existing legal right to which he claims to be entitled or is subject to some already existing legal liability to the other which the other is claiming against him, then not only when exercising the power, is he required among other things to act judicially but the power itself is judicial power . . . On the other hand if he has no authority to determine the already existing legal rights or liabilities of persons but is empowered to impose on them new legal duties or liabilities from which they were previously free or alter or abrogate legal rights to which they were previously entitled, his power is not judicial, although in exercising it he may be, and commonly is, subject to a legal duty to act judicially (that is, to observe the principles of natural justice)".

In the Canadian case a Commissioner appointed under the Combines Investigations Act was sued for slander in respect of some derogatory remarks he had made in his capacity as Commissioner. He took up the position that he was entitled to absolute privilege as he was a judicial officer. It was held that he was not and that he was not protected by absolute privilege because he neither had the attributes similar to those of a court nor did he act in a manner similar to that in which such courts act, although he may be exercising functions which required him to act judicially. These decisions are of no avail to the respondents as they deal with rights in an entirely different context.

Reference was also made to the case of **Allen Berry & Co. v. Vivian Bose**(40). That was also a case concerning the Dalmia Commission, Justice Tendolkar having died and Vivian Bose having been appointed in his place. It is true that in that case it was held that the findings of the Commission did not affect rights of subjects. But that was on a consideration of the nature and scope of the powers of the Commission. In the original **Dalmia case**(10)(supra) that part of Clause 10 which gave the Commission power to recommend the "redress or punishment" which should be taken was deleted. What was left thereafter was "the action which in the opinion of the Commission should be taken to act as a preventive in future cases". So it was held that the Commission was only a fact finding commission meant "to instruct the mind of the government" in regard to future legislation.

Another argument that was put forward was that since the civic disabilities were imposed by Acts of Parliament passed subsequently it cannot be said that the decision and determinations of the Commissions were part of a statutory scheme existing at that time to affect rights of subjects. Support for this submission was sought in the observation of Sharvananda, J. in

Jayaratne's case(19) where he said at page 128 "In deciding whether in making his report in terms of the Commission issued to him the respondent was acting judicially, the test appears to be whether according to the statutory scheme the report has the probability or potentiality in law of affecting prejudicially the rights of individuals, by reason of the statutory scheme itself making it possible for the report to be the basis of affecting the legal rights or liabilities of a person to whom it relates . . . . . ".

With great respect I am unable to assent to this proposition. Halsbury points out that the writs "have sometimes issued to persons or bodies making reports, recommendations, or preliminary decisions that acquire force only after adoption or confirmation or other consequential action by another body". And in note 9 to this para it is said "It seems that the orders (and particularly prohibition) will issue more readily where the act in question will have effect subject to confirmation of its own force or is an integral and necessary part of a proceeding which will when complete have prejudicial effects on the civic rights of individuals."

Mr. Choksy submitted that in the cases referred to in the Note there was already a pre-existing statutory scheme where on confirmation or adoption the findings and determination could affect rights of subjects. But this need not necessarily be so. I would refer to the words "*other consequential action by another body*". Such consequential action may be taken subsequently and need not be in the contemplation of the statute at the time the decision or determination was made. It would be sufficient if the subsequent consequential action, in the present case the two laws imposing the civic disabilities and the decisions or determinations when taken together clearly show that the latter was a necessary and integral part of the proceedings which culminated in the affecting of subjects. It is of course necessary that it must be the report itself which must be given effect to and not the findings or determinations of some other body or person.

In the instant cases these tests are satisfied. It is the findings and the determinations of the two Commissioners which are given effect to by the imposition of civic disabilities on some of the persons against whom the findings have been made. No other person or body independently and on its own consideration, whether using the report as evidence or relevant material, came to these findings. This is made quite clear by the Laws themselves. In the preamble it is stated that whereas the Commissions had made certain findings against certain persons it had become necessary in the public interest to impose civic disabilities on the said persons and the laws were enacted.

Then civic disabilities are imposed on certain persons who are referred to as relevant persons. Section 7 defines a *relevant person as a person* whom the Commissions have found to have committed or to have aided or abetted the commission of any act constituting abuse of power, corruption,

and irregularities in the making of appointments or to have contravened or to have aided or abetted in the contravention of any written law and means each person specified in the schedule to the Laws. It is quite clear that, if there had been no findings against these persons, they would not have been included in the schedule, nor would civic disabilities have been imposed on them. In these circumstances it would be highly artificial and unrealistic to say that the findings and the determinations were not a necessary and integral part of the proceedings by which their civic rights have been affected. It is the findings and the determinations alone and nothing else which have attracted the civic disabilities.

I am satisfied therefore that in the case of the imposition of civic disabilities the findings and determinations of the Commissions were a necessary and integral part of the proceedings which culminated in the rights of subjects being affected, while in the case of the character and reputation the persons concerned have been affected directly by the very force, proprio vigore, of their decisions and determinations. It has been submitted that none of the petitioners have taken up the position that their character and reputations have been affected for the issue of the writ. But I do not know whether when the supervisory jurisdiction of this court is invoked on the ground of excess of jurisdiction or error of law on the face of the record, parties are limited to the matters raised in their petition and affidavit, subject of course to the other side having sufficient notice. These are not pleadings in a civil cause or action. However, this is a matter which does not arise now but ought properly to be decided when the individual applications are taken up.

Having the duty to act judicially

It is true that for very many years and until comparatively recent times it was assumed that in administrative law certiorari and prohibition would issue only in respect of judicial acts or administrative acts in the performance of which the competent authority was under an express or implied duty to act judicially or at least quasi-judicially. This was perhaps due to the historical origin of the writs. At one time the writ only extended to an inferior court. Later it was extended to judicial or quasi-judicial acts, the courts being anxious to find a legal basis for interfering in administrative acts.

And there it rested for several years. Shortly after Lord Atkin had made his formulation Lord Hewart, C. J. added what Lord Reid in **Ridge v. Baldwin**[7] called a "gloss" on the words and introduced a still further limitaton on the type of the bodies to which the writs could go. In the case of **R. v. Legislative Committee of the Church Assembly**[41] Lord Hewart, C. J. after referring to Lord Atkin's formulation said "It is to be observed that in the last sentence which I have quoted from Atkin L. J. the word is not 'or' but 'and'. In order that a body may satisfy the required test it is not enough

that it should have legal authority to determine questions affecting the rights of subjects, there must be super added to that characteristic the further characteristic that the body has the duty to act judicially. The duty to act judicially is an ingredient which, if the test is to be satisfied, must be present".

The Privy Council gave its authority to this "gloss" in the case of **Nakkuda Ali v. Jayaratne**[24] where Lord Radcliffe after quoting the last sentence in the passage referred to above said "It is that characteristic which the Controller lacks in acting under Regulation 62." Indeed he went so far as to say that . . . . "the individual instances are now only of importance as illustrating a general principle that is beyond dispute". In **Fernando v. Jayaratne**[19] (supra) Sharvananda, J. seems to have adopted this test for he says at page 130 "the judicial element which must be present before he can be subjected to the supervisory jurisdiction of this Court through the writ of certiorari is lacking". Earlier at page 126 he says "It is absolutely essential that the person or body to whom these writs are to go must be a judicial body in the sense that it has the power to determine and decide questions affecting the rights of subjects. That this requirement is fundamental has been emphasised in the leading cases of **Nakkuda Ali v. Jayaratne**[24] and **Ridge v. Baldwin".**[7]

If I may say so with great respect, at least as far as this requirement of a superadded duty to act judicially is concerned, the two cases cannot stand side by side. They are poles apart. In regard to Lord Hewart's gloss Lord Reid pointed out in **Ridge v Baldwin**[7] (supra) at page 77 "If Lord Hewart, C. J. meant that it is never enough that a body simply has a duty to determine what the rights of an individual should be, but that there must always be something more to impose on it a duty to act judicially before it can be found to observe the principles of natural justice then that appears to me to be impossible to reconcile with earlier authorities". He then goes on to refer to ten such earlier authorities and says "that is only a selection of the earlier authorities".

In regard to **Nakkuda Ali's case** [24] Lord Reid said at page 80 "Of course if it were right to say that Lord Hewart, C. J's gloss on what Lord Atkin stated is 'a general principle that is beyond dispute' the rest would follow. But I have given my reasons for holding that it does no such thing and in my judgement the older cases do not illustrate any such general principle – they contradict it. . . . . So I am forced to the conclusion that this part of the judgement in **Nakkuda Ali's case**[24] was given under a serious misapprehension of the effect of the older authorities and therefore cannot be regarded as authoritative".

In **Nakkuda Ali's case**[24] the Privy Council did hold that the Controller had given the errant trader adequate notice of the proposed action and the reason for it and had given him the fullest opportunity of meeting the allega-

tions against him. So that in fact the principles of natural justice had been satisfied and the petitioner had no cause for complaint. But quite unnecessarily as it seems, the Privy Council went on to hold that the Controller in revoking the licence was only performing an administrative act and not acting judicially. Quite apart form the House of Lords, this part of the judgment has been widely criticised in other jurisdictions and by almost all academic writers on administrative law, though there have been a few defenders. I have referred to them all in the case of **Dayaratne v. Bandara**[42] and I do not wish to repeat them here.

The effect of the observations in **Ridge v. Baldwin**[7] was summarised by Lord Denning M. R. in the **Gaming Board case**[26] where he said "At one time it was said that the principles only apply to judicial proceedings and not to administrative proceedings. That heresy was scotched in **Ridge v. Baldwin**".[7] In planning decisions there had been very little use made of the writ after the new act was passed and in the case of **R v. Hillington (London Borough) ex parte Royco Homes Ltd.**[43] Counsel suggested that this was due to the fact that people were under the impression that Lord Atkins' formulation required the additional characteristic that the authority should be under a duty to act judicially. Accepting this as a possible explanation Widgery, C. J. said "Accordingly it may be that previous efforts to use certiorari in this field have been deterred by Atkin L. J.'s reference to it being necessary for the body affected to have the duty to act judicially. If that is so the reason for the reticence on the part of the applicants was, I think put an end to in the House of Lords in **Ridge v. Baldwin**".[7]

And finally in the case of **R. v. Hull Prison Board of Visitors**[44] Widgery, C. J. said "One knows nowadays that it is not necessary to show a judicial act in order to get certiorari but if the order is a judicial act it makes it that much easier to justify the making of the order". So that now "It is not necessary to label proceedings 'judicial', 'quasi-judicial', 'administrative', 'investigatory'; it is the characteristics of the proceedings that matter, not the precise compartment or compartments into which they fall" – per Sachs, L. J in the **Pergamon Press Case.**[28]

The Courts have now found no difficulty over holding that certiorari is a suitable remedy for unlawful administrative determinations of all kinds such as a ministerial order taking over a school for wrong reasons and in breach of natural justice – **Maradana Mosque Trustees v. Mahmud**[45] the making of a rating list on wrong principles – **R. v. Paddington Valuation Officer**[46] refusal of permission for entry by an immigration officer on wrong grounds – **R. v. Chief Immigration Officer**[47] and refusal of a certificate of consent for a gaming club without a fair hearing – **R. v. Gaming Board**[26] and that prohibition will be granted to restrain a licensing authority from acting unfairly – **R. v. Liverpool Corporation**[27] and to prevent a local authority from licensing indecent films – **R. V. Greater London Council**[48]. All these

were purely administrative matters, mostly concerned with questions of policy and involving no judicial element in the strict sense.

As Lord Parker, C. J. pointed out in **Ex Parte Lain** [6] at pages 357 & 358 "The position as I see it is that the exact limits of the ancient remedy by way of certioriai have never been and ought not to be specifically defined. They have varied from time to time being extended to meet changing conditions . . . The only constant limits throughot were that it was performing a public duty". The truth is that in the modern view and on a correct analysis the duty to act judicially is not a characteristic which is superseded but simply a corrollary, the automatic consequence, of the authority to determine questions seriously affecting subjects in some right, interest, status, standing in society or some legitimate expectation. Where there is any such power there must be the duty to act judicially. If Sharvananda, J. meant only this when he said at page 126 in **Fernando v. Jayaratne** [19] that "It is absolutely essential that the person or body to whom these writs are to go must be a judicial body in the sense that it has power to determine and decide questions affecting the rights of subjects" I would respectfully agree as it is in accord with both principle and precedent. Our disagreement would then only be in regard to the restricted meaning he has given to the term "rights" as meaning legally enforceable rights.

The extensions of the right to interfere, to bodies performing functions which affect the interests of individuals, other than judicial, has been done by resorting to the more flexible notion that in such cases there was a duty to act fairly. In the modern concept therefore the duty to act judicially means nothing more than the duty to act fairly that is to say by observing the rules of natural justice. As Hedge, J. pointed out in **A. K Kripak v. Union of India** [33] (supra) at page 154 "The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously.

In the second part of his judgment Sharvananda, J. said . . . "that while there may be no duty to act judicially, it does not follow that there is no duty to act fairly by observing the principles of natural justice". Perhaps he was influenced in this by what Lord Radcliffe said in the **Nakkuda Ali case** [24] that "Can one not act reasonably without acting judicially?" Sharvananda, J. then went on to refer to the more important recent decisions in which the duty to act fairly had been referred to and concluded that the Commissioner had a duty to act fairly by observing the rules of natural justice as his determination "grievously affected the petitioner". I would respectfully agree with these decisions and with the conclusion that the Commissioner had a duty to act fairly by observing the rules of natural justice.

All that remained was to determine what exactly was the fairness required in the particular case. This would depend entirely on the facts and circumstances of each case for as Tucker, L. J. pointed out in **Russel v. Duke of Norfolk** [49] "The requirements of natural justice must depend on the circums-

tances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth". And Lord Parker, C. J. observed **In Re H. K. (An Infant)**[50] "That is not, as I see it, a question of acting or being required to act judicially, but of being required to act fairly and to the limited extent the circumstances of any particular case allow and within the legislative framework within which the administrator is working, only to that limited extent do the so-called rules or natural justice apply which in a case such as this is merely a duty to act fairly". So that whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case.

I would hold therefore that the two Commissioners had a duty to act judicially in the sense of having to act fairly by observing the rules of natural justice in the sense I have indicated. To sum up therefore the two Commissioners had legal authority to determine questions affecting seriously the reputation and character of the persons specified as well as their rights and therefore, had a duty to act fairly by observing the rules of natural justice and that they are amenable to the writ jurisdiction of this Court. I would accordingly answer the first question for our decision in the affirmative.

In this connection there are two other arguments which were put forward though without much enthusiasm. These two submissions arise from the fact that our writ jurisdiction is statutory and is contained in Article 140 of the Constitution, the relevant portions of which are as follows:— "Subject to the provisions of the Constitution the Court of Appeal shall have full power and authority . . . . to grant and issue according to law orders in the nature of writs . . . . . ". Similar power was given to the Supreme Court by the Courts Ordinance.

The first submission is that the word "other person" should be read **ejusdem generis** with the other words and when so read our jurisdiction to issue the writs is confined to courts in the strict sense. It is true that de Sampayo, J. expressed the opinion in the case of the **Field General Court Martial**[51] that the **ejusdem generis** rule applied in regard to section 42 of the Courts Ordinance which is the same as Article. But the other two judges expressed no opinion on this matter and secondly that at that time the Supreme Court had no power to issue the wirts of quo warranto as this power was only given to it in 1920 by Ordinance No. 4 of 1920. In the case of **Dankoluwa Estates Co. Ltd. v. The Tea Controller**[52] Soertsz, J. expressed a similar opinion.

But in the case of **Thassim v. Edmund Rodrigo**(53) a Bench of five Judges rejected this view. In that case after pointing out that writs of quo warranto and Mandamus issue to persons not exercising judicial power Howard, C. J. said at page 127 "In my opinion it is clear that the Legislature intended that although the general words follow particular words, the general words are

to be construed generally". This argument was also rejected by the Privy Council in the **Nakkuda Ali case**[24] where Lord Radcliffe said at page 460 "The reference to the writs of Mandamus and quo warranto certainly make it difficult to suppose that only Courts of justice as ordinarily understood are to be subject to these mandates". I hold therefore that the ejusdem generis rule does not apply in this case.

The second argument was that the words "according to law" in the article should be interpreted to mean "our law" and that if it is English law it is the relevant law of England as it was at that time. As far back as 1873 in regard to a similar provision in the Courts Ordinance, it was held that "According to law" meant "according to English law"[54]. The prorogative wirts were unknown to our common law and Lord Radcliffe pointed out in **Nakkuda Ali**[24] that "when Sec. 42 gives power to issue these mandates according to law it is the relevant rules of English common law that must be resorted to in order to ascertain in what circumstances and under what conditions the court may be moved for the issue of the prorogative writ". I have indicated by reference to English cases and our cases what the relevant law is.

Would the issue of the writ be futile?

The second question reserved for our decision is as to whether in view of the passing of Laws Nos. 38 and 39 of 1978 imposing civic disabilities on the persons specified in the schedules the issue of the writs would be futile? This argument only affects the position as far as the imposition of civic disabilities are concerned and does not affect the position as far as the character and reputation of the said persons are concerned. Every person has a right to the inviolability of his character and reputation and if it is in any way assailed he has the right to sue for damages. If the law gives any authority power to make decisions and determinations affecting a person's character and gives that authority immunity from being sued in respect of it, then that authority in coming to such decisions and determination must act fairly by observing the rules of natural justice. If that authority does not do so then as Lord Denning M. R. said the Courts will see that it does so by using its writ jurisdiction. If the writ is issued and the decision or determination is quashed then the person's character and reputation would be cleared and the issue of the writ would not be futile.

In regard to the imposition of civic disabilities it is argued that the quashing of the decisions would be of no avail as the disabilities have already been imposed and the laws cannot be challenged in any way or in any forum. The issue of the writ would not therefore have the effect of restoring the civic rights. In this sense it was argued that the issue of the writ would be futile. It is true that certiorari is a discretionary writ and this Court will not issue the writ if it would be futile to do so. It is also true that the quashing of the fidings will not restore the civic rights to the persons affected. However, if the

decisions against a person is quashed he could whenever the necessity arises take up the position that he is not a 'relevant person' within the meaning of the two laws because then there would be no finding by the Commissions against him and this is one of the requisites of the definition of a relevant person. In this sense too the issue of the writ would not be futile.

In this connection reliance was placed on the case of **Bennet v. Chappel and another**[55] where the declaration was refused on the ground that it wold be futile to do so. In that case the plaintiff desired to acquire a tract of land from Yateley Parish Council and the matter was put to a poll of the entire parish and plantiff was outvoted by a large majority. He asked for a declaration that the decision was invalid on the ground that the poll was not correctly taken. In the meantime however another poll was taken correctly with the same result. The Court held that it would be futile to declare the first poll invalid because the Council had after a correct poll already tranferred the land to some other authority. The facts are therefore completely different from the facts before us.

I would therefore answer the second question that it would not be futile for the Court to issue the writ and that it would be open to this Court to issue the writ in any case in which the facts and circumstances warrant it.

Calling in question the validity of the Laws

It was submitted that by issuing the writs this Court would be questioning the validity of the two Laws and that this is prohibited by Article 80(3) of the present Constitution. This article is as follows :– "Where a Bill becomes law upon the certificate of the President or the Speaker as the case may be being endorsed thereon no Court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such act on any ground". It is of course immaterial for this purpose whether this Article or the provisions of the 1972 Constitution apply, for there is similar provision in that Constitution in Article 48(2) which is as follows: "No institution administering justice and likewise no other institution or person or authority shall have the power or jurisdiction to inquire into, pronounce upon or in any manner call in question the validity of any law of the National State Assembly".

The argument is that the Imposition of Civic Disabilities Laws are based upon the Commissioners' findings the correctness of which has been accepted by Parliament and that this is made clear by the Preamble to the Laws. The report is the basis of the legislation, it is said. The effect of a writ of Certiorari will be to quash and thereby render void the reports. It is submitted that this would be both directly and indirectly to call in question the validity of the Laws, becuase the Laws assume and are based upon the fact that the reports are in all respects valid reports. So it is said that the issue of the writs would violate Article 80(3) of the present Constitution and Article 48(2) of

the 1972 Constitution. At least the Court would be doing indirectly what it is prohibited from doing directly namely, from in any manner calling in question the laws.

The laws impose civic disabilities by section 2 on "every relevant person" and section 7 defines "a relevant person" as meaning a person who has been found by any report of the two Commissions to have committed or aided or abetted in the commission of any of the acts specified therein and means each person specified in the Schedule to the Laws. Both conditions have to be satisfied if the civic disabilities are to be imposed on any relevant person. In fact the Preamble states that the Laws have been passed as the Commissions have made certain findings against certain persons and that it has become necessary to impose civic disabilities on the said persons in the public interest.

If there are no findings by the Commissions against such persons they would not be relevant persons to whom the laws would apply. Similarly if the findings against any person are quashed by means of a writ of certiorari then the law would not apply to such person. This involves construction and applying the laws and does not touch the question of the validity of the laws in any manner whatsoever. The distinction between the two should be kept in mind. Thus Lord Reid said in **British Railways v. Pickin**[56] "The function of the Court is to construe and apply the enactments of Parliament. The court has no concern with the manner in which Parliament or its officers carrying out its standing orders perform these functions. Any attempt to prove that they were misled by fraud or otherwise would necessarily involve an inquiry into the manner in which they had performed their functions . . . . . " This is not being done here.

In that case one ground of plaintiff's action was that in obtaining the enactment of a certain section in a private Act the defendants had fraudulently concealed certain matters from Parliament and its officers and thereby misled Parliament into granting them this right. It was held that the Courts had no power to examine proceedings in Parliament in order to determine whether the passing of an Act had been obtained by means of any irregularity or fraud. Here it is not contended for the petitioners that the National State Assembly had been misled into passing these laws. Nor is there any attack on the validity of the laws or any of its provisions. All that is asked for is that the finding and determinations of the two Commissions be set aside on the grounds urged. This only means that if the findings against any person are set aside then the laws will not apply to any such person.

In **Pickin's case**[56] there is reference to an old case **M'Kenzie v. Stewart** in which a person succeeded in obtaining an Act of Parliament for the sale of certain property and for certain debts with which the property was alleged to have been charged to be paid out of the proceeds. These debts were fictitious and the person concerned had practised a fraud on Parliament. The Scottish

Courts held that Parliament had held that debts were true debts and that they could not find to the contrary. But the judgment was reversed by the House of Lords. In dealing with the effect of this case Lord Reid said at page 617 "The operative provision was 'to pay and discharge the said sum of Rs. 51,350 Merks Scots or £ 2582. 15s. 6d. Sterling with which the said premises stood then charged and incumbered as aforesaid with the arrears of interest'. This is I think easily susceptible of the construction that if there were no sums with which the premises were encumbered then there was nothing to pay off. There was no direction to pay off anything except incumberences and if there were no incumberences the direction had no operative effect".

Here too the position is the same. If there are findings and determinations by the Commissioners then the laws will apply. If not they will not. The National State Assembly did not adopt and embody the findings and determinations in the laws. Nor did it prohibit the findings and determinations being challenged in Court. It could have easily done so by making the findings and determination final and conclusive or that they cannot be challenged in a Court of law or otherwise. Nor did it take away the writ jurisdiction of this court in respect of the findings and determinations of the two Commissioners. The right of a citizen to have recourse to the Courts can only be taken away by express enactment or by necessary implication. There is, here, no such express enactment or necessary implication.

The respondents relied on certain observations in the House of Lords in the case of **Minister of Health v. Regem ex parte Yaffe.**(57) In that case Lord Dunedin said at page 346 "If therefore the scheme as made conflicts with the Act it will have to give way to the Act. The mere confirmation will not save it. It would be otherwise if the scheme had been per se embodied in a subsequent Act, for then the maxim to be applied would have been **posteriora derogant prioribus**" and that the confirming order had the effect of an Act of Parliament and therefore could not be attacked. "In other words, proceedings by way of certiorari were impossible." This is not in conflict with what I have expressed for the scheme as embodied in the Act becomes part of it. Here there is no such thing in regard to the findings and determinations of the Commissioners.

It was argued that the fact that the persons against whom the civic disabilities are imposed are named in the Schedules as persons against whom findings and determinations had been made have been embodied as part of the laws and that if these findings and determinations are quashed then it would have the effect of taking such persons out of the schedules and in that sense it would be questioning the validity of the Act. It is quite obvious that the intention of Parliament was not to give validity to the findings of the Commissioners by placing the names of these persons in the schedule. If that was so there was no need to define a relevant person as a person against whom findings had been made and whose names are in the Schedules. It

would have been quite enough to say that a "relevant person" means a person whose name appears in the schedules.

The two Commissioners were asked and did make findings against persons in respect of six matters. Parliament did not intend to impose civic disabilities on all the persons against whom findings were made. If that were so it would not have been necessary to name any persons in the schedules. Parliament's intention was to impose disabilities only on some of the persons against whom findings had been made in respect of four out of the six matters. So it became necessary to specify these persons in the Schedules against whom there were findings. It does not mean that Parliament named the persons in the Schedules on whom civic disabilities were to be imposed. But it stipulated at the same time that there must be valid findings against them and that they should also be named in the Schedules.

The persons who are referred to in sections 4 & 5 must definitely be persons against whom there are findings. They are not named in the Schedules. If there are no findings against them or if the findings against any of them are quashed then the laws will not apply to them. The Laws remain valid and of full force and effect. For these reasons I am of the view that in issuing the writ of certiorari this Court could not in any manner be questioning the validity of the Laws passed by Parliament. It would only be a question of construction and application of the laws which is essentially and traditionally a function of the Courts.

I hold therefore that the Commissioners are amenable to the writ jurisdiction of this Court and it would not be futile on the grounds urged for the Court to issue the writs. The several applications will now be fixed for argument for the determination of the question as to whether on the facts and circumstances of any particular case the writ should issue or not.

ABDUL CADER, J.

The facts are set down in the judgment of my brother, Vythialingam J., which I have read. In the case of **Durayappah v. Fernando**[58] Lord Upjohn stated as follows:—

> "In their Lordships' opinion there are three matters which must always be borne in mind when considering whether the principle should be applied or not. These three matters are: First what is the nature of the property, the office held, status enjoyed or services to be performed by the complainant of injustice. Secondly in what circumstances or upon what occasions is the person claiming to be entitled to exercise the measure of control entitled to invervene. Thirdly when a right to intervene is proved what sanctions in fact is the latter entitled to impose upon the other."

In the case of **Jayawardene v. Silva,**[59] the court referred to the dictum with acceptance and went on "to consider the third of the matters which Their Lordships in the **Durayappah case**[58] regarded as of importance in deciding whether the principle **audi alteram partem** does or does not apply, namely what sanctions the authority is entitled under the Statute to impose upon the complainant of injustice."

The Privy Council decision of this case is reported as **Jayawardene v. Silva** in 73 NLR 294[14] wherein Lord Guest stated as follows:—

> "In their Lordships' view the Supreme Court rightly held that the proper test for deciding whether the function performed by a tribunal such as the Collector was quasi-judicial is to be found in the case of **Durayappah v. Fernando . . . .**"

In **Fernando v. Jayaratne,**[19] Sharvananda J and two others held:—

> "the Writ does not lie inasmuch as an examination of the provisions of the Commissions of Inquiry Act does not show that the report of the Commissioner was intended to be a step in a process which may in law have the effect of altering the legal rights or liabilities of persons named in the report."

> "The only power that the Commissioner has is to inquire and make a report and embody therein his recommendations. He has no power of adjudication in the sense of passing an order which can be enforced **proprio vigore,** nor does he make a judicial decision. The report of the respondent has no binding force; it is not a step in consequence of which legally enforceable rights may be created or extinguished."

Prior to these cases, there had been the case of **De Mel v. de Silva**[1] wherein Gratiaen J., stated as follows:—

> "Learned Counsel for the petitioner concedes, I think, that if matters had stood in this way the function with which the respondent was charged could not properly have been decsribed as judicial or quasi-judicial functions over which this Court could exercise any controlling jurisdiction. Whatever other remedy may or may not have been available to a person who claims to be dissatisfied with the procedure adopted by the respondent in executing his commission, an application for a writ in the nature of prohibition or certiorari would not have been appropriate for the purpose of challenging that procedure.

> "Learned Counsel submits, however, that although this is the legal position in cases where a person normally acts as a Commissioner appointed by the Governor-General, supervening legislation which has

come into operation since the date of the respondent's appointment has altered the scope of his status and functions. Before the respondent entered upon his investigation of the matters on which he was required to submit his report to the Governor-General, Parliament passed the Colombo Municipal Council Bribery Commission (Special Provisions) Act, No. 32 of 1949. Section 5 of the Act provides as follows:—

(Section 5 is reproduced)

"It is argued for the petitioner that by reason of this subsequent legislation the respondent's functions, in so far as they are directed towards the investigation of the question whether any particular Municipal Councillor has acted corruptly in a manner contemplated by section 5 of the Act of 1949, have in truth become judicial or quasi-judicial functions in view of the statutory consequences which would inevitably arise from the publication of a finding adverse to the Councillor concerned. Learned Counsel contends that in this state of things the respondent has 'legal authority' — directly or indirectly — 'to determine questions affecting the rights of subjects' (per Atkin L. J. in **R. v. Electricity Commissioners**[41]), and that a writ of certiorari or a writ of prohibition may therefore issue from this Court should it be established that the respondent has either exceeded his so-called 'jurisdiction' or, in exercising that 'jurisdiction', violated in some way the fundamental principles of natural justice."

And Wijewardena C. J. stated in the same case:—

"It is true that the respondent is not expected to make any order in his report affecting the legal rights of the petitioner. It is, in fact, rendered unnecessary in view of section 5(1) of the Colombo Municipal Council Bribery Commission (Special Provisions) Act No. 32 of 1949, which states in clear terms that the Governor-General "shall" cause the finding to be published "as soon as may be" in the Gazette if the finding is adverse to the petitioner, and that on such publication the petitioner should be subject to the disqualifications set out in that section. An adverse finding of the Commissioner, therefore, results necessarily in affecting the legal rights of the petitioner."

In **Dias v. Abeywardene**[13] H. N. G. Fernando, S. P. J., quoted his approval of the decision in **De Mel v. de Silva**[1] and distinguished that case from the case before him as follows:—

"What rendered the Commissioner in that particular case amenable to such a Writ was the important additional circumstance that special supplementary legislation enacted by Parliament provided that a finding of the Commissioner that a person had been guilty of bribery would have the effect of depriving such a person of his civic rights. On that ground

the Commissioner was held to have 'legal authority to determine a question affecting the rights of persons and having the duty to act judicially."

He went on further to say—

"Even if the report of the Commissioner in this case were to be published, it would not, in the absense of any supplementary legislation, be proof for any purpose that X or Y or Z had (in the example I have taken) done any act found by the Commissioner to have been done by him."

These were some of the important cases that had decided the law as applicable in Ceylon in respect of writs of certiorari and prohibition. It was in this state of the law that our present Constitution was enacted.

Counsel for the petitioner referred us to the development of the law in English Courts as regards writs of certiorari especially since 1967 which have been discussed at length in the judgment of Vythialingam J., and submitted that we should apply those principles in this case. Counsel for the respondent referred us to Article 140 of the Constitution which empowers this Court to issue writs of certiorari "according to law" and submitted that the "Law" referred to is the law that had been adopted by the Courts of this country up to the promulgation of this Constitution.

I find it difficult to accede to this request of Counsel for the respondents for the reason that in this age of fundamental rights and human dignity, it is important that we should not close our windows to the liberal opinion now gaining ground in England which is, after all, the home of origin of the various writs referred to in Article 140. I agree with the view expressed by my brother that the new principles that have been outlined in the latest decisions of English courts should be applied in appropriate circumstances in this country, too. I quote from **R. v. Hull Prison Board of Visitors**(44) where Lord Widgery CJ stated:

"One must start this question of whether certiorari will or will not go with a recognition of the fact that there is not, and one may hope never will be, a precise and detailed definition of the exact sort of order which can be subject to certiorari. If we ever get to the day when one turns up a book to see what the limit of the rights of certiorari is it will mean that the right has become rigid, and that would be a great pity. Therefore, we approach it today, in my judgment, on the basis that there are no firm boundaries, and one has to look to such clear, useful and helpful pointers as, with the assistance of counsel, we have been able to derive from the authorities.

Let us look, first of all, at the arguments for certiorari going on the facts of this case. One looks at the circumstances and one visualises the board of visitors sitting very much like a bench of magistrates, one

would think, and the applicant prisoner standing before them. With that mental picture, one can say it looks as though this is a case for certiorari. Instinctively one would think that this would be within the category to which the order applies.

That is reinforced by the view, which I hold at any rate, that the act which the board of visitors perform under this jurisdiction is a judicial act. One knows nowadays that it is not necessary to show a judicial act in order to get certiorari, but if the order is a judicial act it makes it that much easier to justify the making of the order. I should have thought that there was no question but that this was a judicial act for present purposes.

Thus fortified, I would go next to the House of Lords decision in **Ridge v. Baldwin**[7] because this is in a sense where the modern approach to certiorari is to be found. There is one passage in Lord Reid's speech to which I would like to refer. He is dealing with the well known passage of Atkin LJ in **R. v. Electricity Comrs, ex parte London Electricity Joint Committee Co.**[4] Lord Reid said:

"The matter has been further complicated by what I believe to be a misunderstanding of a much quoted passage in the judgment of Atkin, L. J., in **R. v. Electricity Comrs.**[4] He said: "The operation of the writs (of prohibition and certiorari) has extended to control the proceedings of bodies which do not claim to be and would not be recognised as, courts of justice. Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs. A gloss was put on this by Lord Hewart, C. J. in **R. v. Legislative Committee of the Church Assembly**"[41]

Then he went on to deal with the facts of that case which are of no interest to us here, and came to a few words of Salter J. Lord Reid said in **R. v. Electricity Comrs**[4]

'SALTER, J., put it in a few lines: "The person or body to whom these writs are to go must be a judicial body in this sense, that it has power to determine and decide, and the power carries with it, of necessity, the duty to act judicially. I think that the Church Assembly has no such power and, therefore, no such duty.'[41]

Then he went on to deal with Lord Hewart CJ's gloss again, and I leave that passage unread, and go on to the passage where he said:

'I have quoted the whole of this passage because it is typical of what has been said in several subsequent cases. If Lord Hewart, C. J.,

meant that it is never enough that a body simply has a duty to determine what the rights of an individual should be, but that there must always be something more to impose on it a duty to act judicially before it can be found to observe the principles of natural justice, then that appears to me impossible to reconcile with the earlier authorities.'

Hence, as I say, I approach this on the footing that the board of visitors have a judicial task to perform and proceed to perform it.

I also proceed to a conclusion on this question keeping very much in mind what was said in one of the more recent cases in this Court concerned with the availability of certiorari, and that is the case which first recognised that the Criminal Injuries Compensation Board was subject to control in this court by the prerogative orders. The case is **R. v. Criminal Injuries Compensation Board, ex parte Lain,**(6) and the passage I want to refer to comes in the judgment of Lord Parker C. J where he said:

"The position as I see it is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time, being extended to meet changing conditions. At one time the writ only went to an inferior court. Later its ambit was extended to statutory tribunals determining a **lis inter partes.** Later again it extended to cases where there was no **lis** in the strict sense of the word, but where immediate or subsequent rights of a citizen were affected. The only constant limits throughout were that the body concerned was under a duty to act judicially and that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari . . . .

I mention that particularly because, if one wanted encouragement to extend the scope of certiorari, one could hardly find a more powerful phrase to constitute that encouragement than the one which I have just read."

When one examines the warrants issued to the 2nd respondent, it is quite clear that the findings of the two Commissioners cannot by themselves have any legal consequences in the manner described in the various local judgments that I have referred to above. But certain legal consequences have **now** overtaken the petitioner as a result of the enactment of Laws 38 and 39 of 1978.

In the case of **M. W. H. de Silva,**(1) sanctions came from a separate piece of legislation, namely, the amendment of the Bribery Act. Similarly, Laws 38 and 39 of 1978 are also a separate piece of legislation by which sanctions have been imposed on the petitioners in these proceedings. As H. N. G. Fernando, S.P.J. stated in **Dias v. Abeywardena**(13) case, "it was because of the important additional circumstance that the Commissioner was held to have legal authority to determine a question affecting the rights of persons

and having the duty to act judicially" that a writ issued in the case of **De Mel v. de Silva.**[1] In other words, in **De Mel v. Silva,**[1] sanctions became automatic to the findings of the Commissioner because the amendment to the Bribery Act had been made before the Commissioner gave his findings, whereas in this case, the sanctions have been imposed after the findings of the two Commissioners. In my humble view, this distinction makes no difference. What matters is that punishment had occurred as a result of the findings of the two Commissioners. I realise that in **Fernando v. Jayaratne**[19] sanctions had overtaken the petitioner in the form of dismissal when the petitioner moved the court. In that case Sharvananda, J., stated as follows:—

> "Thus, it would appear that a person conducting an inquiry culminating in nothing more than an advisory report or recommendation is hardly making a determination of a question affecting the rights of subjects. However, if the report or recommendations form an integral and necessary part of a statutory process or scheme which may terminate in action adverse or prejudicial to the rights or interests of individuals the writ of prohibition or certiorari will lie against it."

It has to be noted that in that case, the petitioner was a public servant, who was given due notice before his services were terminated, though the termination was the direct result of the report. Under these circumstances, it was not necessary for the Court to consider the effect of subsequent imposition of sanctions on the petitioner. In these proceedings, as a direct result of the reports, sanctions have overtaken the petitioners. The sanctions were imposed by statutory process, which adopts the reports for that purpose. Could it not be then said that the recommendations have **now** turned out to be, though they were not at the time the reports were submitted, a step in the process, integral and necessary, culminating in the denial of civic rights?

In the cases of **Rex v. Electricity Commissioners**[4] quoted by Sharvananda, J., it is stated as follows:—

> "the Commissioners were prohibited from proceeding with an inquiry into a matter outside their province, in spite of the fact that no scheme that the Commissioners were empowered to make could take effect until confirmed by the Minister of Transport and then approved by both Houses of Parliament. In objecting to the issue of prohibition the Attorney-General contended that the Commissioners came to no decision at all and that they acted as advisers and merely recommended an order embodying a scheme to the Minister of Transport who might confirm it with or without modification and then the Minister had to submit the order so confirmed or modified by him to the Houses of Parliament which may approve it with or without modifications and that until the order is so approved nothing is decided. Atkin L.J. in rejecting that argument said: "In the provision that the final decision of the Commissioners is not to be operative until it has been approved by the

two Houses of Parliament I find nothing inconsistent with the view that in arriving at that decision the Commissioners themselves are to act judicially and within the limits prescribed by Act of Parliament and that the Courts have powers to keep them within those limits. It is to be noted that it is the order of the Commissioners that eventually takes effect; neither the Minister of Transport who confirms, nor the Houses of Parliament who approve can, under the statute, make an order which, in respect of matters in question, has any operation. I know of no authority which compels me to hold that a proceeding cannot be a judicial proceeding subject to prohibition or certiorari because it is subject to confirmation or approval even where the approval has to be that of both Houses of Parliament."

It would appear to lend support to the petitioners in this case. The reports of the Commissioners have formed the basis of the two Laws 38 and 39 of 1978, more or less in the manner of the approval of the findings of the Commissioners. It is significant that one of the Commissioners has recommended the very penalty that the Legislature imposed, namely, deprivation of civic rights. Counsel for the respondents urged that the report of the Commissioners contain merely findings and that is the term used in the two Laws, too, and that these findings can be "determination" for writ to issue only when sanctions attach to the findings. That is the view that appears to have been taken in the English cases cited before us and I accept that submission. But I differ from Counsel that the sanctions should be present at the time of the findings. To the best of my recollection, no cases were cited to us where sanctions were imposed by legislation subsequent to the findings. I have come to the conclusion that inasmuch as sanctions have begun to operate pursuant to the findings, the various requirements outlined in the **Durayappah case**(58) have been established and the Commissioners are amenable to the writ prayed for.

I have so far discussed the question on the basis that sanctions overtook the petitioners from outside. But I agree with Vythialingam, J. that **"apart from the loss of their civic disabilities under the two Laws,** the determination of the two Commissioners would **grievously** affect these persons of their own force proprio vigore" and that "rights are not to be confined to the jurisprudential concept of rights to which correlative legal duties are annexed" which means in other words that the reports of the two respondents in these petitions contain within them sanctions as would make the Commissioners amenable to the writ. I take the view that this principle is applicable only in appropriate circumstances, depending on the severity of the effect on the subject. When I questioned Mr. Renganathan in what manner the petitioners could rehabilitate their reputation if writ procedure was not available, Mr. Renganathan urged that it could be done by way of an action for a declaration. But I find that in the case of **Attorney-General v. Chanmugam**(60) the Attorney-General contended that a District Court has no jurisdiction to declare null and void the findings of a Commissioner on any grounds whatso-

ever and he conceded that the plaintiff may have applied to the Supreme Court to quash the proceedings by way of certiorari if there had been a violation of the principles of natural justice. This argument would be valid even in cases where certiorari will not issue. It would, therefore, appear that relief to petitioners by way of a declaration is a matter of doubt. It behoves, therefore, on this court to jealously safeguard the rights of the petitioners whose reputation has been assailed if it had been done without giving them an opportunity to defend themselves or to put forward their points of view by placing evidence and/or by explaining evidence which had been led against them which could take a different character as a result of the explanation. After all, the petitioners in this case are men of public importance and good repute is a very important armour in their fight for survival in public life. I should think that to this class of persons good repute is even more important than money or land, and, therefore, if a finding of a Commissioner which leads to loss of property can become " a determination" within the meaning of Lord Atkin's definition, it is even more important that the findings affecting reputation should equally be termed "a determination."

am fully in agreement with the conclusions of my brother in respect of futility and Article 80(3) of the Constitution. The two laws define a relevant person as follows:—

" 'relevant person' means a person who has been found by any report of the Commission of Inquiry referred to in this Law—

(a) to have committed or to have aided or abetted in the commission of and act constituting—

(i) abuse of power,
(ii) corruption,
(iii) irregularities in the making of appointments;

(b) to have contravened, or to have aided or abetted in the contravention of, any provisions of any written law,

and means each person specified in the Schedule to this Law;"

This would mean that before any party can be deprived of his civic rights, it must be proved that (1) there is a finding against him and (2) his name appears in the schedule to the Bill. Mr. Victor Perera, the petitioner in S.C. Application No. 789/78, was not a person against whom there was a finding by the Commissioner, Mr. Gunawardena, but, nevertheless, his name appears in the schedule. The latter filed an affidavit dated 26th October, 1978, that he did not hold an inquiry against the petitioner and "the reference made to the petitioner in paragraph 2 of my report to Mr. Victor Perera is a mistake."

It would be open to Mr. Perera to contend that he is not a person in respect of whom paragraphs (a) and (b), quoted above, would apply, and,

therefore, one of the two ingredients has not been proved against him. Similarly, it should be possible for another petitioner to contend that the finding by the report of the Commission of Inquiry should be a legal finding. We are not concerned in these proceedings whether that petitioner would succeed in his contention. All that is necessary in these proceedings is to satisfy us that such a contention is possible at the appropriate hearing.

I, therefore, agree with the order made by Vythialingam, J.

ATUKORALE, J.

I agree with the judgment of Vythialingam, J.

Preliminary questions of law held on and case sent for further hearing.