PREMARATNE

v.

UNIVERSITY GRANTS COMMISSION AND OTHERS

COURT OF APPEAL
YAPA, J.,
GUNAWARDANA, J.
C.A. NO. 44/97
JUNE 15, 1998
JULY 03, 1998

Writ of Certiorari – Expulsion of student – University Grants Commission – False declaration – commission mechanically adopting views of Inquirer – Irregular – Rules of Natural Justice.

The petitioner had been admitted at first to the University of Sri Jayawardenapura on the result of the GCE 'A' Level examination 1978, and had followed a course in Biological Sciences. The Petitioner had sat again for the GCE 'A' Level 1979, and was informed that she was qualified to be admitted to the Faculty of Medicine. In her application in 1981 for admission the petitioner had made a declaration that she had not been previously registered to follow a course of study in any other University.

This declaration had been proved to be false by the Inquirer in his Report of 4.7.1988 and the respondent had in execution of the recommendation expelled the petitioner. However by letters of 22.11.1994 and 27.01.1995, the respondent had rescinded that decision but had withheld the publication of the results of the MBBS Final examination 1987. The petitioner sought a writ of certiorari to quash the decision to cancel the petitioner's Registration as a student of the University of Ruhuna where she had been following a course in Medicine and a writ of Certiorari to compel the respondents to release the 1987 MBBS Final Examination results for which examination the petitioner had sat in July, 1987.

Held :

(i) It is observed that there is no prohibition against sitting for GCE 'A' Level examination on a second time even after securing admission to a faculty, if the rule that a student once admitted to any faculty cannot change the course of study is to be rationally enforced, then there ought also to have been a rule barring a student from sitting for the GCE 'A' Level examination once the student had entered a faculty.

(ii) The first respondent commission had acted as if the recommendation of the Inquirer was binding and it had no discretion whatever to decide on the appropriate punishment. The UGC a statutory body entrusted with the power or the discretion under the University Act should have addressed itself independently to the matter for consideration.

(iii) The 1st respondent Commission should have given the petitioner an opportunity to show cause why the inquirer's recommendation should not be implemented in all its rigour not only because the imposition or otherwise of a punishment was a statutory duty cast exclusively on the Commission but also because the Inquirer himself had not taken into consideration any of the mitigating circumstances or attached any weight to them.

Per Gunawardene, J.

"Thine eye shall not pity: but life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot – does not represent the perfect system of justice, a perfect system of punishment is based on neither the retribute nor the deterrent principle excluding but is the result of a compromise between them."

(iv) Court can interfere by certiorari if punishment is altogether exercise and out of proportion to the occasions. Punishment in itself is an evil and can be justified only as the means of attaining greater need, retributions in itself is not a remedy for the mischief of the offence but an aggravation of it.

Per Gunawardena, J.

> "Justice must not only be seen to be done by any trier of fact or inquirer but it must also be seen to be done on a rational basis."

APPLICATION for writs in the nature of Certiorari/Mandamus.

Cases referred:

1. *Herring v. Templement* – 1973 3 All ER 569.
2. *R v. Manchester Metropolitan* University *ex parte* Nolan.
3. 1911 AC 179.
4. *R v. Barnsley exp. Hook* – 1976 1 WLR 1052.
5. *R v. Intervention Board for Agricultural Produce* – 1986 2 All ER.

Dharmapala Senaratne with *Upul Gunaratne* for petitioner.

P. G. Dep, DSG for respondents.

Cur. adv. vult.

December 17, 1998.

U. De Z. GUNAWARDANA, J.

This is an application made by the petitioner for : (i) a Writ of Certiorari as against the 1-3 respondents; ie (1) University Grants Commission; (2) Vice-Chancellor, Ruhunu University, (3) Ruhunu University, respectively to quash the decision made by the 1st respondent (the date on which the said decision was made cannot be discovered from the material available to the court but the petitioner had been informed of the decision by letter dated (02.09.1988) to cancel the petitioner's registration as a student of University of Ruhunu at which University she had been following a course of study in medicine leading up to the degree in that discipline;

(ii) a writ of mandamus to compel the 1-49 respondents to release the results of the MBBS final examination for which examination the petitioner had sat in July, 1987.

The petition whereby the said application has been made to this court is somewhat untidily drafted in that it is wanting in clarity. Although Certiorari and Mandamus had been prayed for in the undated amended petition as against "the respondents" – thereby meaning all 49 respondents, it became clear at the hearing before us that if the Court decides to grant relief, the Writ of Certiorari has to be granted only as against the 1st respondent because it was the 1st respondent that had made the decision to revoke the petitioner's registration as a student or rather it would be more correct to say, as would be clear from the sequel, that the 1st respondent merely implemented the decision or the recommendation of the inquirer that the petitioner should be compelled to withdraw from the Ruhunu University. Further it is unclear from the averments in the petition of the petitioner as to who or which authority had withheld the publication or announcement of the results of the MBBS final examination and at the argument before us it was submitted that it was the 2nd to 49th respondents, rather the senate of the 3rd respondent-university members thereof being added as 4th to 49th respondents that had refused to release the results. If that is so, Mandamus if at all, has to be directed as against the 2nd to 49th – the 2nd respondent being the Vice-Chancellor of the Ruhunu University which is cited as the 3rd respondent. But it was felt at the hearing that if the court decides to grant the relief, since the 1st respondent, ie the University Grants Commission was in over-all control of the affairs of the University in question, it was best, if not prudent, to grant the Writ of Mandamus as against the 1st respondent as well – so that all technicalities or impediments that may or may not arise – can be swept out of the way.

The background facts relevant to this application are as follows:

It would appear that if the allegations against the petitioner have a factual basis and the findings of the inquirer are correct – the petitioner had been, at first, admitted to the university of Sri Jayawardanapura on the results of the GCE Advanced Level examination held in the year 1978 and she had followed a course of study in Biological science thereat. It has now become clear that the petitioner had entered, assuming that she did so, the faculty of Biological science at the above-mentioned University not really through choice but rather under compulsion – so to speak because she had not secured sufficient marks to enter the medical faculty which marks must be higher than the marks necessary to qualify for admission to the faculty of the biological science.

The petitioner had sat again for the GCE Advanced Level examination in the year 1979 but it was several months later that she was apprised by the authorities concerned that she was qualified on the basis of those results to be admitted to the faculty of medicine. The petitioner had conceded that she sat for the GCE Advanced Level examination in the year 1978 although she repelled the allegation that she was previously registered as a student at Sri Jayawardanapura University to follow a course in Biological science. In her application for university admission (1980) which application was dated 5.2.1981, the petitioner had made a declaration in cage 14 that she had not been previously registered to follow a course of study in any other University. It was on the basis that the declaration had been proved to be false, as had been held by the inquirer in his report dated 04.07.1988, that the 1st respondent, ie University Grants Commission had in execution of the recommendation of the inquirer expelled the petitioner.

If there had been a way of knowing on the very day that the results of the GCE Advanced Level examination held in 1979 or shortly thereafter in the year 1979 (for which examination the petitioner had sat for the second time in that year, ie 1979). This situation in which the petitioner found herself could well have been avoided. The

procedure according to which, although the results of an examination are released but yet, the candidate would be kept in the dark as to whether he/or she was qualified to be admitted to the particular faculty to which he/she desires to be admitted has nothing much to commend it. It is to be observed that although the results on which the petitioner was eventually admitted to the faculty of medicine had been announced on 12.10.1979, yet she had been informed of her eligibility (upon the basis of the said results) to be admitted to the medical faculty very much later, ie several months later although the exact date had not been made known to us.

It is to be observed that the allegation against the petitioner was that petitioner had been registered as a student of the University of Sri Jayawardanapura to read for a degree in Biological science on 15.10.1979, on the basis of the results of the GCE Advanced Level examination held in the year 1978 which fact the petitioner had (allegedly) fraudulently omitted to disclose in her application dated 5.2.1981 made for admission to the University. In fact, in her application dated 5.2.1981 made on the basis of the results of GCE (Advanced Level) Examination held in 1979 the petitioner had made a declaration that she had not been previously registered at any other University and it was, as stated before, on that application which contained that allegedly false declaration that she had been chosen to be admitted to the faculty of medicine. What I am seeking to pin-point is this: that is, if the petitioner had known on the very day that the results of the GCE Advanced Level examination held in the year 1979 were released, ie on 12.10.1979 that she was qualified to be admitted to the faculty of medicine – she wouldn't have allegedly got herself registered two days later, ie on 15.10.1979 to follow a course in Biological science on the basis of the results of the GCE Advanced Level examination held in the year 1978. It was somewhat of a queer situation. It is not the case that the petitioner acquired the qualification to be eligible for admission on a date later than 12.10.1979 on which date the results (of the GCE Advanced Level examination held in 1979) which qualified her or made her eligible for admission to the faculty

of Medicine were released; although she was later held or found to be qualified on the self-same results that were in fact released on 12.10.1979 to be admitted to the medical faculty – yet she did not know of it till after she got herself admitted to faculty of Biological science assuming of course, that she had done so. This is one of the mitigating circumstances that deserved or rather demanded consideration in favour of the petitioner but which had not been taken into the reckoning at any level or stage by those who were instrumental in imposing the punishment of getting the petitioner to withdraw from the faculty of medicine for life or for ever. It is, by no means, rational conduct on the part of the authorities concerned to permit a student to sit for the GCE Advanced Level examination – a second time and yet impose a prohibition against the student seeking admission to the faculty of the student's choice on the better performance at the later (subsequent) examination. It is to be observed that there is no prohibition against sitting for the GCE Advanced Level examination on a second or a third occasion – even after securing admission to a faculty in the University. If the rule that a student once admitted to any faculty cannot change the course of study is to be rationally enforced, then there ought also to have been a rule barring a student from sitting for the GCE Advanced Level examination once the student had entered a faculty. It may be said, in passing that, as there is no such rule it is unreasonable to prohibit a student from changing the course on the basis of better results obtained at a subsequent examination. It is not to be forgotten that at the inquiry into the matter as to whether the petitioner had made a false declaration in the application dated 5.2.1981 referred to above, the personal file of the petitioner was not forthcoming from the Sri Jayawardanapura University, as it should have, if the petitioner had been, as alleged, previously registered as a student at the Sri Jayawardanapura University.

It is also worth noticing that the 1st respondent, who had taken the decision or rather it is more correct to say had mechanically adopted the recommendation of the inquirer that the petitioner be expelled from the faculty of Medicine indefinitely or for life, had in

fact, rescinded that decision, as evidenced by letters dated 22.11.1994 (P3) and 17.1.1995 (P4), to expel the petitioner and even communicated that decision, to reinstate the petitioner, to the 2nd and 3rd respondents by the aforesaid letters. But the 3rd respondents, to put it more accurately its senate, yet persists in withholding the publication of the results of the MBBS final examination for which the petitioner had sat in July, 1987.

The learned Deputy Solicitor-General who appeared for the respondents, conceded that the 3rd respondent, ie Ruhunu University was not empowered to do so, ie to withhold the results, by any rule as such and was not entitled to persist in refusing to release the results, more so, as the 1st respondent, ie the University Grants Commission which body alone had the power to cancel the registration of the student, had rescinded its previous decision, if it can be called a decision made by the 1st respondent, to expel the petitioner, for as pointed out earlier, the 1st respondent had merely given effect to the recommendation of the inquirer (in to the matter as to whether the petitioner had made a false declaration in her application dated 5.2.1981 for admission to the University) that the petitioner be excluded for ever from the course of study in medicine which the petitioner had been pursuing at the Ruhunu University. In fact, the petitioner had even sat for the MBBS final examination when this drastic punishment was meted out to her. As the 1st respondent, ie the University Grants Commission, as pointed out by the Deputy Solicitor -General had on 21.11.1994, rescinded the previous decision to expel the petitioner – the petitioner automatically thereby acquired the right to compel the 2nd and to 49th respondents to make her (petitioner's results known or released to her as the petitioner must now, ie after the rescission of the previous decision by the 1st respondent expelling the petitioner be treated as a lawful or rightful student of the 3rd respondent University. In fact, the learned Deputy Solicitor-General, very properly, conceded that 2nd and 3rd and 4 – 49 respondents-4th-49th respondents being members of the senate of 3rd respondent University – have no right – now that the 1st respondent had revoked

the decision expelling the petitioner to persist in their refusal to release to the petitioner the results of the relevant examination.

In this case, the 1st respondent, ie the University Grants Commission in expelling the student (petitioner) pursuant to, rather in execution of the recommendation of the inquirer (who investigated this matter) had acted as if without thought, that is, mechanically. It is the 1st respondent under the University Act, No. 16 of 1978, who had the power, if at all, to impose the punishment and not the inquirer who had been appointed by the 1st respondent. Although the inquirer may, perhaps, make a recommendation with regard to the matter of punishment the main matter that had been investigated by him (the inquirer) being whether the declaration, of the petitioner in her application for admission to the University which application was dated 5.2.1981, to the effect that she had not been previously registered as an internal student to follow a University course was false or not.

Perhaps, the most obnoxious of the features from the standpoint of the law. In the proceedings against the petitioner which culminated in her expulsion was the defect inherent in the procedure (adopted by the 1st respondent) in that the 1st respondent had mechanically adopted and implemented the view or rather the recommendation of the inquirer that the petitioner should be expelled from the faculty of Medicine for ever or indefinitely. Of course, considerations of practical convenience may justify the entrustment of the powers of the 1st respondent, to the inquirer, to conduct an investigation and make recommendations as to the ultimate decision to be taken. But the 1st respondent, ie the University Grants Commission, being the statutory body entrusted with the power or the discretion under the University Act, should have addressed itself independently to the matter for consideration, viz whether the punishment should be so drastic as that recommended by inquirer. Needless to say that the inquirer was not empowered under the Universities Act to issue directions to the 1st respondent; nor was the first respondent – a

subordinate element in an administrative "hierarchy" – in relation to the inquirer. As such the inquirer couldn't give instructions which were binding on the 1st respondent and, in fact, no such instructions had been – given for the inquirer had merely made a recommendation with regard to the matter of punishment although the 1st respondent, ie the University Grants Commission, had acted as if the recommendation was binding and that the 1st respondent, ie the University Grants Commission, had no discretion whatever to decide on the appropriate punishment. It is worth reiterating that the question of making a decision in regard to the punishment and whether, in fact, a punishment was called for were all matters that fell exclusively within the purview of the powers if not the duty of the 1st respondent. The terms of the letter dated 2.9.1988 (P1) containing, as it did from the standpoint of the petitioner, the "unpleasantest words that ever blotted paper" – whereby, the 1st respondent had informed the petitioner that she had been expelled, be it noted, "in compliance with the recommendation of the inquirer" places the matter beyond controversy, that the 1st respondent had in imposing the punishment of expelling the petitioner from the University, veritably acted under dictation of the inquirer.

That the 1st respondent had signally failed to bring its mind or judgment to bearer on the question of punishment, as was its inviolable duty to have done – the 1st respondent being the body on which the power to regulate admission of students had been statutorily conferred – was manifested strangely enough by (P1) itself whereby the 1st respondent had informed the petitioner that it, ie the University Grants Commission had, in accordance with the recommendation of the inquirer expelled the petitioner. It would be illuminative of the point I am seeking to explain if I reproduced, in extenso P1, referred to above, which is as follows:

විශ්වවිද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාව

ආර්. එල්. ප්‍රේමරත්න මෙනෙවිය,
85/1, 'චිත්‍රකලා',
බදුලුපිටිය පාර,
බදුල්ල.

මෙනෙවියනි,

විශ්වවිද්‍යාල ප්‍රවේශ - 1980

පූර්වවෝක්ත කරුණ සම්බන්ධයෙන් ම විසින් ඔබ වෙත එවන ලද 88.03.01 දිනැති ලිපියට පිළිතුරු වශයෙන් ඔබ විසින් එවන ලද 88.03.09 දිනැති ලිපිය හා ඔබගේ ඉල්ලීම පරිදි 1988.06.10 දින මෙම කාර්යාලයේදී පැවැති පරීක්ෂණය සම්බන්ධවයි.

02. පරීක්ෂණය පැවැත්වූ විශ්‍රාමලත් ශ්‍රේෂ්ඨාධිකරණ විනිශ්චයකාරතුමාගේ නිර්දේශය පරිදි 1980/81 අධ්‍යයන වර්ෂයේ වෛද්‍ය විද්‍යා පාඨමාලාවට තෝරා ගෙන ඇති ඔබේ විශ්වවිද්‍යාල ප්‍රවේශය වහාම ක්‍රියාත්මක වන පරිදි අවංලගු කිරීමට විශ්ව විද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාව තීරණය කර ඇති බව කණගාටුවෙන් දන්වමි.

03. කෙසේ වෙතත් ඔබ කැමති නම් 1979/80 අධ්‍යයන වර්ෂයේද තෝරා ගනු ලැබූ ශ්‍රී ජයවර්ධනපුර විශ්වවිද්‍යාලයේ පීව විද්‍යා පාඨමාලාව හැදෑරීමට ඉඩ පහසුකම් සැලසිය හැකි බවද කරුණාවෙන් දන්වමි.

මෙයට - විශ්වාසී,

තිස්ස තන්දසේන.
ජ්‍යෙෂ්ඨ සහකාර ලේකම්/ප්‍රවේශ ලේකම් වෙනුවට.

The terms of the letter P1, reproduced above verbatim, is explanatory, more than anything else, of the fact that the 1st respondent, viz the University Grants Commission had done nothing else than to have mechanically, that is, in regulation manner, so to speak, carried into effect the recommendation of the inquirer, as if the 1st respondent had no choice or discretion in the matter and was bound hand and foot to adhere to the recommendation. It is clear that the 1st respondent had, in enforcing the punishment prescribed by the inquirer, taken the least interventionist attitude and the role played by the 1st respondent in this matter demanded comparison with that of a conduit merely conveying the punishment to the petitioner. P1, is final proof of the fact that the petitioner had been expelled from the faculty of Medicine for no other or better reason than that the inquirer had recommended the expulsion of the petitioner for good. A perusal of P1, ie the letter sent by the 1st respondent conveying to the petitioner that the petitioner had been expelled in compliance with the recommendation of the inquirer, serves to show that there is nothing therein even remotely suggesting either that the 1st respondent had given its consideration to the justice or the fairness of the punishment or the mitigating circumstances. It may safely be said that no punishment can be said to be fair which had overlooked the factors extenuating the conduct of the petitioner even assuming that the petitioner had made the false declaration that she was alleged to have made. As evidenced by the letter dated 22.12.1994 (P3) under the hand of the secretary of the 1st respondent, ie the University Grants Commission and as stated therein, the 1st respondent had decided to make the punishment that had been previously imposed in compliance with the recommendation of the inquirer, less drastic after considering the mitigating circumstances at a meeting of the University Grants Commission held on 21.11.1994. The very fact that the mitigating circumstances were considered by the University Grants Commission on that date, ie on 21.11.1994, which was more than six years after the expulsion, is further proof of the fact that the 1st respondent had not paid any attention before, to such circumstances or the fitness of the punishment recommended by the inquirer – for

if those aspects or circumstances had been considered before or earlier that is, before the implementation of the recommendation of the inquirer – there was no necessity to consider the extenuating circumstances after the commencement of the operation of punishment as the 1st respondent had in fact done (on 21.11.1994).

In the case of *Herring v. Templeman*[1] the student in question was not allowed to continue on a course at a teacher training college because his work was deemed unsatisfactory. The academic board had only power to make recommendation regarding dismissal. It was held that the student was entitled to a fair chance before the governing body to show cause why the recommendation of the academic board should not be accepted because it was the governing body that had the power to impose the punishment.

R. v. Manchester Metropolitan University, ex-parte Nolan, the independent 15th July, 1993, was a case involving a student on the Common Professional Examination (CPE) in law who was accused of having committed disciplinary offences under the university regulations. He had taken notes into the examinations and these were discovered by the invigilators. The disciplinary committee found the student guilty not of cheating but of the less serious offence of attempting to secure an unfair advantage. However, it was left to the CPE Board to determine what the penalty ought to be. When the Board met to impose the penalty it did not have the mitigating evidence before it; nevertheless, it imposed the ultimate penalty not only declaring that the applicant had failed all six examinations but also denying him the chance to resit them. The decision was quashed by certiorari. Sedley, J. held that the Board could impose any punishment it thought fit – but to do so it must have before it all the relevant evidence. It was held that not having that evidence amounted to a failure of procedural justice. Both the decisions cited above dealing with internal disciplinary procedures relating to student cases have brought into prominence one cardinal principle, that is, that the body empowered or having the power to impose the punishment must, as a necessary

condition – precedent to imposing the penalty, afford the student the opportunity to show cause against the punishment being meted out or adduce material before it with a view to reducing the severity of the measure of punishment. As pointed out above, not only had the 1st respondent, ie University Grants Commission, which was the sole body having the exclusive power to punish, not afforded the petitioner an opportunity to show cause against the implementation of the inquirer's recommendation but had also failed to consider the fitness of the punishment that had been recommended by the inquirer and, in fact, couldn't have possibly done so without considering the relevant evidence that was adduced before the inquirer. There is nothing to indicate that the 1st respondent was even conscious of these aspects, namely that : (i) question of punishment was a matter that fell exclusively within its purview and (ii) that it couldn't arrive at a punishment that suited the alleged contravention of the rule by the petitioner unless it considered, at least the salient points in the evidence. There is nothing to even remotely suggest that the 1st respondent had before it the relevant evidence, let alone give thought to it, before implementing the recommendation of the inquirer to expel the petitioner from the faculty of Medicine. The affidavits tendered on behalf of the 1st and by the 2nd respondents are even more illuminative of the fact that the 1st respondent had mechanically given effect to the recommendation of the inquirer that the petitioner be expelled. The chairman of the 1st respondent and, ie the University Grants Commission and the 2nd respondent, ie the Vice-Chancellor of the 3rd respondent University in their respective affidavits, filed in a representative capacity, had stated only this with regard to the matter of punishment that had been meted out to the petitioner : "that on the basis of the recommendation of Mr. H. Rodrigo the 1st respondent cancelled the admission and registration with immediate effect as evidenced by letter dated 2.9.88 sent by the 1st respondent UGC to the petitioner with a copy to the 2nd respondent. The said letter was marked by the petitioner as P1. (vide paragraph 7 of the affidavit dated 3.11.1997 filed by the chairman of the 1st respondent). Then

the 2nd respondent, ie the Vice-Chancellor of the Ruhunu University in his affidavit had stated thus: "The University Grants Commission appointed Mr. Rodrigo, retired Judge of the Supreme Court, to inquire into this matter and on the basis of the recommendations of Mr. H. Rodrigo cancelled the admission and registration with immediate effect as evidenced in letter dated 2.9.88 sent by the UGC to the petitioner with a copy to me. The said letter was marked P1 by the petitioner (vide para 6 of the affidavit dated 22.1.1998 of the Vice-Chancellor of the 3rd respondent University). And the 1st respondent had, in fact done just what was averred in the excerpts of the affidavit reproduced above and nothing more. The 1st respondent couldn't have possibly played a less interventionist role for the 1st respondent had taken the least interventional attitude in the matter of punishment for the 1st respondent had completely dissociated itself from the process or act of punishment – as revealed by the experts of the affidavits reproduced above.

This vindicates the observation I had made above in this judment that the role played by the 1st respondent, viz the University Grants Commission demanded comparison with that of a conduit merely conveying the punishment that had been recommended by the inquirer, to the petitioner. The 1st respondent had clearly abdicated its powers in the matter of punishment by default in thus mechanically enforcing the punishment of expulsion recommended by the inquirer.

Not only had the 1st respondent made default in not exercising its own personal judgment and discretion, as it should have, in the matter of or in relation to the question of imposition of the penalty, but had also overlooked the principles of natural justice in imposing the punishment of expelling the petitioner without hearing the petitioner in opposition to the recommendation made by the inquirer whose recommendation had been scrupulously implemented by the 1st respondent as if routinely and mechanically. Although the proceeding in a matter of this sort – although no such proceedings as such had been held before the 1st respondent, ie the University Grants

Commission because the question of guilt of the petitioner and even the punishment had been considered solely by the inquirer – wouldn't have been judicial nor even quasi-judicial, yet as the course of events had eventuated in a student, ie the petitioner being sent down or rusticated permanently or for life – common fairness demanded that the petitioner should have been given an opportunity to be heard in opposition to the recommendation of the inquirer that the petitioner be expelled permanently, because so much was at stake – what was at stake being the petitioner's entire professional career. That at the relevant time the petitioner had even sat for the MBBS Final must be uppermost in one's mind. In this context, Lord Loreburn's epitome, in (1911) AC 179 which has come to be regarded as a classic statement of the duty of any decision maker, ie "they must. . . fairly listen to both sides, for that is a duty laying upon everyone who decides anything. . ." would have been particularly worth following.

However, it may be argued that even if the petitioner had been afforded an opportunity by the 1st respondent to show cause why the recommendation to expel should not be implemented, the petitioner wouldn't have had good cause to show. This argument may appear at first sight seemingly reasonable because there is, perhaps room to think that it is reasonable to avoid a wasted hearing when there are no good grounds. But as Cane forcefully points out, this potentially undermines natural justice for not only is justice not seen to be done, but the case for the other side is not actually heard. In Cane's own words: "The classic position is that a court exercising supervisory jurisdiction should not, when presented with a challenge on procedural ground concern itself with the merits of the case". As Megarry, LJ. stated : "As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of fixed and unalterable determinations that by discussion suffered a change".

In this case it was doubly necessary that the 1st respondent should have given the petitioner an opportunity to show cause why the inquirer's recommendation should not be implemented in all its rigour not only because the imposition or otherwise of a punishment was a statutory duty cast exclusively on the 1st respondent but also because the inquirer himself had not – as was manifest from his order embodying the recommendation to expel – taken into consideration any of the mitigating circumstances or attached any weight to them as he (the inquirer) seemed to have strongly felt that the mitigating circumstances were something that was beside the point. The 1st respondent, ie the University Grants Commission, had not given even a cursory thought to, as was its duty to have done, the measure of punishment or the degree of its severity or to the suitability or the appropriateness of the punishment as recommended by the inquirer. The idea of imposing a less drastic punishment, after taking into consideration the mitigating circumstances, had never even occurred to the 1st respondent – mostly because the petitioner did not have or was not afforded an opportunity to acquaint the 1st respondent with those matters or at least, to make the 1st respondent conscious of them. As has been said by Megarry, LJ. in the excerpt cited above – very often "unalterable determinations by discussion suffer a change". It is worth noticing, as revealed by letters dated 22.11.1994 (P3) and 17.1.95 (P4) communicating the decision made by 1st respondent revoking the earlier decision, cancelling the registration of the petitioner as a student at the Ruhunu University – to the Registrar of the 3rd respondent university, that the mitigating or the extenuating circumstances in favour of the petitioner had been considered for the first time by the 1st respondent only on 21.11.1994 – more than 6 years after the 1st respondent had informed the petitioner by letter dated 2.9.1988 (P1) that the registration of the petitioner as a student in the Medical faculty had been cancelled in compliance with the recommendation of the inquirer. If, in fact, the 1st respondent had applied its mind to the suitability of the punishment that had been recommended by the inquirer before carrying that recommendation into effect there was the potential that, ie the University Grants Commission,

would not have totally accepted it, for as evidenced by P3 and P4, at its meeting held on 21.11.1994 it, ie the University Grants Commission had decided to revoke the recommendation of permanent expulsion and request the 3rd respondent, ie the Ruhunu University to release the results of the MBBS Final examination to the petitioner for which examination, as stated above, the petitioner had sat in July, 1987. In a way, what a prophetic utterance, the words of Megarry, LJ., viz "unalterable determinations by discussion suffer a change" – had been in relation to the punishment that had been meted cut to the petitioner for on the very first day, they, ie the members of the University Grants Commission, "discussed" or considered the fitness of the punishment, although it was over six years later, the punishment "suffered a change" in the direction of rationality and proportionality. Although the prevention of students making false declarations is a reasonable objective, that could not justify the pursuit of a policy of inflicting grossly excessive and unreasonably punitive punishment. The main consideration, as evidenced by P3 and P4, under the hand of the secretary to the 1st respondent, that had prompted the 1st respondent to repudiate or modify the original punishment as recommended by the inquirer was that the 1st respondent had felt that expulsion for life was too severe a punishment for in P3 and P4, referred to above, it had been explicitly stated that withholding of results for just over 06 years, which also meant expulsion for that space of time, that being the interval of time that had elapsed between the time of commencement of the implementation of the recommendation of expulsion and the date of consideration of the fitness of that punishment by the 1st respondent, was an adequate punishment. It will be recalled that in the case of *R. v. Manchester Metropolitation University,* cited above, although it was the disciplinary committee that found the student guilty of attempting to secure an unfair advantage, yet it was the CPE Board that has the power to determine whether a penalty ought to be imposed or not and, if so, its severity. However, the penalty imposed by the CPE Board was set aside because the CPE Board had prescribed the penalty without having regard to the relevant evidence. In the case in hand too, as had been repeatedly emphasized above, it was the

1st respondent which should have ultimately determined the penalty and that too with reference to or having regard to the relevant or salient points in the evidence, as well as the mitigating circumstances – a thing which the 1st respondent did more than 06 years later than the due time or date – thereby, perhaps, proving the wisdom of the old adage, off-repeated, that it is better late than never.

I had stated above that there is a two-fold reason or that it is doubly necessary, that the 1st respondent ought to have afforded an opportunity to the petitioner to show cause against the recommendation of the inquirer being implemented.

Reading between the lines, so to speak, what the inquirer seemed to say in his report is this: (*a*) the expulsion in the circumstances of this case, is not a punishment; that being so, mitigating circumstances are not relevant and need not be considered;

(*b*) In any event, as the petitioner ought to be treated as one who has robbed another student of a place in the Medical faculty, the petitioner should of necessity, be deprived of the place in the faculty of Medicine, irrespective of any other circumstances.

It is patently wrong to say that expulsion in the circumstances cannot be said to be a punishment. Punishment, primarily means the imposition of a disadvantage. Depriving one of a better position is a disadvantage which is essentially a punishment. There is no gainsaying that the petitioner would have been better off if she had not been expelled from the faculty of Medicine. The advantages she had lost by being expelled even after the petitioner had sat for the MBBS Final, are too self-evident to be elaborated on.

The 2nd ground adduced by the inquirer, referred to above, viz that the petitioner ought to be expelled because her representation or declaration that she had not been registered as a student to follow a course of study in any other University had deprived another student

of a place in the Medical faculty which that other student would have got if not for the said misrepresentation on the part of the petitioner. In other words, the gist of the reasoning of the inquirer being that inasmuch as the petitioner's conduct or declaration had deprived another student of a place in the faculty of Medicine – the petitioner must be made, as an imperative need, to unavoidably suffer the consequence of losing her place in the faculty of Medicine. To quote from the report of the inquirer: "I am therefore of the view that the penalty of dismissal is not a punishment *per se* but depriving a student of stolen property, as it were, which the student had obtained by fraudulent misrepresentation from another student who should have been rightly admitted". The inquirer has also said; :" . . . this rule merely takes away from him that which is not his or hers to retain".

It looks as if the inquirer's view seems to be based on the conception of retributive justice alone. Indignation against injustice seems to have been the sole criterion adopted by the inquirer. "Thine eye shall not pity; but life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot," – does not represent the perfect system of justice, perfect system of punishment is based on neither the retributive nor the deterrent principle exclusively but is the result of a compromise between them. As Salmond puts it, from a utilitarian point of view, such a conception, ie punishment based solely on retributive justice is inadmissible. Salmond further states: "punishment in itself is an evil and can be justified only as the means of attaining greater good. Retribution in itself is not a remedy for the mischief of the offence but an aggravation of it".

I wonder whether it was Falstaff who opined: "Wisdom cries out in the streets and no man regards it". I am not sure for I cannot remember at this distance of time. Anyhow the wisdom enshrined in the observations made by Salmond (reproduced above) seems to be vindicated and even vividly demonstrated by the measure or the mode of punishment recommended by the inquirer, for as the inquirer himself had stated in his report, expulsion of the petitioner for life or permanently

benefits nobody. To quote the relevant excerpt from the inquirer's report: "that being so, it is patently unfair by the student displaced by fraud to permit her to benefit from the fraud". But in the same breath the inquirer proceeds to say thus : "that nobody gains from dismissing her – neither the student displaced nor the commission, nor the government or the country for that matter – is beside the point of principle of fairness that is at the bottom of this rule of admission".

It is plain as a pikestaff that the inquirer had formed the view that violation of the rule has of necessity whether one likes it or not, to be inexorably visited with the ultimate penalty of dismissal, no matter what the mitigating circumstances were; no matter that no one benefits from it, as the inquirer himself, in fact, had stated above. In fact some of the circumstances that ought to have been considered by the inquirer, in extenuation of the petitioner's conduct of making a false declaration, such as, that she had completed five years' of study at the faculty of Medicine and that she had even sat for the MBBS final, although itemised or referred to in the report of the inquirer had been expressly left out of consideration because the inquirer, with a conspicuous lack of forbearance, and of sensitivity to consequences, equated the permanent dismissal of the petitioner as, pointed out above, say, to a thief being made to disgorge what he (the thief) has wrongfully taken, I am afraid the analogy given by the inquirer is not quite apt. The consequences of expelling a student who had followed an arduous course in medicine for five years and had even sat for MBBS final are incomparably far more devastating than, say, a thief being deprived of a wrist-watch that he had stolen. Would one even dream of taking away from a man a stolen kidney which had been transplanted or implanted in him? One cannot ignore the fact that the petitioner was fully qualified to be admitted to the Medical faculty in that she had gained sufficient or the prescribed marks to be eligible for admission. The only transgression that she was found to be guilty of by the inquirer, as pointed out above, was that the petitioner had made a false declaration to the effect that she had not been registered

to follow a course of study in any other University before or prior to her seeking admission to the Medical faculty. It may be pointed out, in passing, that the reasoning by which the inquirer had found the petitioner guilty of making a false declaration cannot be said to be all that tenable although, all in all, and in spite of that flaw in the reasoning, the finding of guilt, may yet be correct. Of course, I refrain from making any observations on the correctness or otherwise of the finding of guilt arrived at by the inquirer, because an inquiry into that aspect is quite uncalled for in the light of the scheme and tenor of this order made by me. But this much I must point out, for justice must not only be seen to be done by any trier of fact or inquirer, but it must also be seen to be done on a rational basis. But the inquirer's reasoning, at least in regard to one aspect, as would appear from the sequel does not seem to measure up to or satisfy that condition at least in regard to one inference which he had drawn in the report as follows: "It is my finding without any trace of doubt in my mind and confirmed by the conduct of the father and the student at the conclusion of the inquiry when they appealed for a lenient recommendation on humanitarian grounds such as a suspension of the student as against a dismissal, though formally maintaining innocence".

The reasoning of the inquirer reproduced above, with respect, typifies "an outrageous defiance of logic". After all, what can one do after one has been found guilty, rightly or wrongly, except to plead for forgiveness or mercy. It is to be observed, even as remarked by the inquirer, the petitioner had stoutly protested her innocence throughout. Plea for mercy or leniency is never an unerring pointer to or "confirmation" of guilt, as the inquirer seems to have thought – as it would have been, if the petitioner had admitted guilt and pleaded for mercy. Consequences of deprivation ought to be considered for a penalty to be proportionate and a penalty which is disproportionately draconian must be quashed as being an excessively severe penalty. The doctrine of proportionality which works on the assumption that any action or punishment ought not to go beyond the scope necessary

to achieve its desired result has found a place in case law, for instance, in *R. v. Barnsley ex. p. Hook*[4] which illustrates that if any action or measure is considered to do more harm than good in reaching a given objective it is liable to be set aside for the court has to consider whether ends justify the means.

I think the punishment, ie permanent expulsion that had been meted out to the petitioner is disproportionately drastic, considering that the petitioner had even sat for the MBBS final examination. As had been held by Lord Denning in the memorable decision in *Reg. v. Barnsley Council* referred to above, "the court can interfere by certiorari if punishment is altogether excessive and out of proportion to the occasion".

In the case referred to above a street trader (Harry Hook) was banned by the market manager, for life from trading in the market, all because of a somewhat trifling incident: Harry Hook wanted to relieve himself and had gone to a side street near the market and urinated. A security officer had reprimanded Harry Hook and words had been exchanged and the market manager's affidavit evidence was that he had banned Harry Hook because of the abuse of his staff and not because of the urinating. The Court of Appeal of England quashed the decision of the market manager – one of the grounds for the quashing being that the punishment was, in the circumstances excessive. Lord Denning took the view that the punishment of depriving the man of his livelihood was out the proportion to the original incident.

I think the University Grants Commission, ie (1st respondent) had failed to make a considered exercise of the powers at its disposal because it had mechanically given effect, almost as a matter of unthinking routine to the recommendation made by inquirer, be it noted, who was appointed by the University Grants Commission itself.

In the Barnsley Council case cited above, one of the Judges, Sir John Pennycuick was at pains to stress that the incident did not justify

"the disproportionately drastic step of depriving Mr. Hook of his licence and indirectly of his livelihood".

Although Mr. Hook was banned for life by the market manager, from trading in that particular market belonging to the Barnsley Council yet he could have, if he so chose, carried on the self-same business elsewhere. But it would be, virtually, if not for certain, impossible for the petitioner (student) to seek to follow the same course of study in medicine at some other institution or University as had, in fact, been vividly demonstrated or proved to the hilt in this case, for ever since the petitioner was banned or expelled from the faculty of medicine of the Ruhunu University, she had been passing away her time in idleness – trauma of which, perhaps, can best be imagined rather than described. Banning for life a student who had even sat for the final examination of a University and who had entered after qualifying at a fiercely competitive examination is something more than a punishment but is a major disaster – a traumatic misfortune. Because so much was at stake from the standpoint of the petitioner the authorities should have acted more fairly by not imposing the ultimate penalty. No doubt, a penalty or punishment should be visited on a student who fails to make a full disclosure of relevant facts in the interest of sound administration but the duty or the obligation not to make a false declaration ought to be enforced by less drastic means not breaching the principle of proportionality. There is nothing to show on record as, had been repeatedly pointed out above, that the mitigating circumstances had been given thought to even if there had been a provision or law disqualifying a student on disciplinary grounds for what the applicant had allegedly done or rather omitted to do. The 1st respondent should have leavened the punishment with some forbearance as it had, in fact done after the effluxion of more than six years after the commencement of the operation of the punishment. Principles of fairness ought to supplement the rules. To punish a student as severely as had been done in this case entails a breach of the principle of proportionality. The concept of proportionality has clearly emerged as a ground of review and the Barnsley Council case

is not the only case in which this principle was invoked and adopted The judgment in *R. v. Intervention Board for Agricultural Produce*[5] was also predominantly rested on the same principle.

Although, the expulsion of the petitioner had taken place as far back as 02.09.1988 and thereafter, this matter had gone though many vicissitudes, yet I feel it has reached a happy ending from the standpoint of all parties considering the fact that the petitioner's first application to this court was either withdrawn or dismissed. The petitioner can be said to have achieved "victory at all costs . . . however long and hard the road may have been; perhaps, the petitioner knew for certain that "without victory there was no survival" – for her. The first respondent in fact, is to be treated as a consenting party to the quashing of the punishment of expulsion that had been imposed on the petitioner because, as explained above, the 1st respondent had already, ie on 21.11.1994 decided to reinstate the petitioner as a student of the faculty of Medicine of the Ruhunu University, ie the 3rd respondent.

To sum up, Writ of Certiorari is hereby granted quashing the decision expelling the petitioner from the faculty of Medicine of the Ruhunu University for the following specific three-fold reasons:

(i) the 1st respondent had on 21.11.1994, already, as stated above, revoked the decision if it can be called a decision, made by the 1st respondent, to expel the petitioner. This court quashes it, so to say, for formality's sake or rather, acquiesces in the aforesaid decision made by the 1st respondent to reinstate the petitioner as a decision that has been rightly made;

(ii) in any event, the "decision" or rather the process of implementation by the 1st respondent, ie the University Grants Commission of the recommendation made by the inquirer is affected by a procedural impropriety in two ways: (*a*) the 1st respondent had mechanically implemented the recommendation

of the inquirer without giving any thought to the appropriateness of that punishment; (*b*) nor had the 1st respondent afforded the petitioner any chance to show cause against the implementation or the adoption by the 1st respondent of the punishment recommended by the inquirer;

(iii) the punishment of permanent expulsion from the Medical faculty was clearly excessive and out of proportion and, as explained above, involves a breach of the principle of proportionality.

Now that the 1st respondent had made a decision restoring the petitioner as a student of the faculty of Medicine of the Ruhunu University, because the 1st respondent had felt that the petitioner had been made to expiate sufficiently the transgression of the rule she had allegedly committed. It goes without saying that the 2nd to 49th respondents are bound to release the results of the MBBS final for which examination the petitioner had admittedly sat. Accordingly I do hereby direct, the 1st-49th respondents, by way of Mandamus to release to the petitioner the results of the aforesaid examination forthwith. For the sake of completeness this order made by way of Mandamus will be binding on the 1st respondent as well – as it is the 1st respondent who is in all over all control of the relevant University.

The application for Writ of Certiorari and Mandamus is hereby allowed as prayed for.

HECTOR YAPA, J. – I agree.

Application for writ of certiorari, and mandamus allowed.