1949 *Present :* **Gratiaen J.**

DE MEL, Petitioner, *and* M. W. H. DE SILVA, Respondent

S. C. 564—APPLICATION FOR A WRIT OF PROHIBITION

Writ of Prohibition—Special tribunal entrusted with judicial powers and duties—Procedure not provided for—Procedure to be followed—Commissions of Inquiry Act of 1948.

When a tribunal other than a court of law is vested with legal authority to determine questions affecting the rights of parties, but the procedure which it should adopt is not expressly prescribed by statute, the tribunal is master of its own procedure, provided, however, that the essential requirements of justice and fair play must be observed.

"In the absence of special provisions as to how the tribunal is to proceed, the law will imply no more than that *the substantial requirements of justice shall not be violated*. It must give the party who may be affected by its decision an opportunity of being heard and of stating his case. It must give him notice when it will proceed with the matter, and it must act honestly and impartially, and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to *the essence of justice*."

THIS was an application for a Writ of Prohibition against the respondent who was appointed to investigate and report in regard to alleged prevalence of bribery and corruption among the members of the Colombo Municipal Council. The petitioner, who was called upon to meet twenty-seven separate allegations of corruption, alleged that the procedure adopted by the respondent was objectionable and tainted with bias.

H. V. Perera, K.C., with *S. Nadesan, D. S. Jayawickrama, C. S. Barr Kumarakulasinghe* and *K. C. Nadarajah*, for the petitioner.

Cur. adv. vult.

December 5, 1949. GRATIAEN J.—

This matter was fully argued before me on November 25, 1949, by learned Counsel who appeared in support of the petitioner's application. Two questions arose for my decision :—

(1) Whether, in view of relevant legislation under which the respondent has been appointed to investigate and report on certain matters of public interest connected with the alleged prevalence of bribery and corruption among the members of the Colombo Municipal Council since December 2, 1943, it is competent for this Court in an appropriate case to issue a mandate in the nature of a writ of prohibition to prohibit him from holding an inquiry into an allegation that a particular Councillor had acted corruptly in a manner specified by section 5 (1) of the Bribery Commission (Special Provisions) Act, No. 32 of 1949.

(2) Whether the facts set out in the petitioner's affidavit filed in these proceedings afford *prima facie* grounds for holding that the respondent has divested himself of jurisdiction to inquire into allegations that the petitioner had on twenty-seven separate occasions corruptly given sums of money or other gifts to various Councillors for the purpose of inducing them to exercise their respective votes in his favour at Mayoral elections.

The first of these questions was one of sufficient difficulty and importance in my opinion to call for a decision of a fuller Bench. That question has now been answered by a Divisional Court of three Judges in the affirmative[1]. It now remains for me to consider whether, in the circumstances of the present case, I would be justified in issuing a rule *nisi* against the respondent on the grounds relied on by the petitioner. For this purpose I must, of course, assume for the time being that the relevant and admissible facts sworn to by the petitioner are true in substance and in fact.

It is not suggested that when the respondent originally entered upon his commission he lacked jurisdiction to hold an inquiry into allegations of corruption in respect of which any single adverse finding would, upon due publication in the *Government Gazette*, result in the petitioner being deprived of important civic rights. The gist of the petitioner's complaint, however, is that the procedure which the respondent has so far adopted in the discharge of his functions has been such that it is now impossible for the respondent to hold a fair and unbiased inquiry into the twenty-seven allegations of corruption framed against the petitioner. In that state of things, it is contended, it would be contrary to all principles of natural justice for the respondent to sit in judgment over the petitioner. There is no doubt in my mind that should there be substance in this complaint, this Court should not hesitate to prevent a person charged with functions of a judicial nature from exercising them in an atmosphere in which there is a reasonable likelihood of his being biased against the person over whom he proposes to sit in judgment. In such cases a superior Court is not so much concerned with the question whether the party to the proceedings believes that the pending investigation may turn out to be what the petitioner's Counsel describes as " a mock trial with the verdict pre-determined ". The real question, as Swift J. pointed out in *Rex v. Essex Justices* [2], *is whether a reasonable man might apprehend that the tribunal may not be impartial and unbiased.* If in the present case the earlier procedure adopted by the respondent in the course of his investigations has already placed him in such a position as to create *a reasonable suspicion* that justice may not be done to the petitioner, it follows that the respondent has divested himself of jurisdiction to proceed with the inquiry. *Rex v. Sussex Justices* [3]. That " justice must not only be done but must manifestly and undoubtedly seem to be done " is no doubt a somewhat trite phrase, but as a principle of law it remains an undisputed expression of one of the eternal verities.

Before I proceed to examine the petitioner's complaint, it will be convenient if I first consider the scope of the respondent's functions in relation to the various matters which he has been appointed to investigate. The Governor-General has considered it to be " in the interests of the public welfare" that inquiry should be made (1) as to whether any member of the Colombo Municipal Council had either corruptly solicited, received or agreed to receive, *or* on the other hand had corruptly given, promised or offered any gifts, loan, fee, reward or other advantage as an inducement to influence official action ; (2) as to what steps should be taken to

[1] *(1949) 51 N. L. R. 105.*
[2] *(1927) 2 K. B. 475.*
[3] *(1924) 1 K. B. 256.*

prevent or check such bribery and corruption in the future. The respondent was selected as a suitable person to carry out this comprehensive investigation, and he was authorised " to hold all such inquiries and make all such investigations into the aforesaid matters as may appear to him to be necessary " for the purpose. It is very apparent that the respondent has been entrusted with duties involving a wide range of investigation standing in sharp contrast to the scope of strictly judicial duties which arise when a Court of law, with no previous knowledge of the facts, has to adjudicate upon clear cut issues submitted for its decision by parties to contentious litigation. The Commissions of Inquiry Act of 1948 in terms of which the respondent was appointed vests him with ample powers to summon witnesses and, if he chooses to do so, to require evidence before him to be recorded on oath or affirmation. Statutory provision is also introduced to protect him from interference or obstruction in the performance of his functions, and offences of " contempt " committed in disrespect of his authority are expressly made punishable by law. Various other means have been devised to compel members of the public to assist him to carry out his investigations as expeditiously as possible. While his statutory powers are wide and varied, the procedure which he must follow in executing his commission is, however, nowhere laid down, except that section 14 of the Act requires him by necessary implication to permit any person " whose conduct is the subject of inquiry or who is in any way implicated or concerned in the matter under inquiry " to be legally represented at the whole of an inquiry. In all other respects, if I may adopt the language of Lord Chancellor Simon in *General Council of Medical Education v. Spackman* [1], he is " not a judicial body in the ordinary sense, and is *master of his own procedure* ". Indeed, section 7 (*d*) of the Ordinance does not even require him to be bound by strict rules of evidence. It is true that the later Act of 1949 has, in accordance with the ruling of a Division Bench of this Court, vested him with " legal authority to determine questions affecting the rights of subjects ", and imposed on him " the duty to act judicially ". Parliament has nevertheless been content not to place any additonal fetters on his discretion nor has it chosen to regulate the procedure which he should adopt when he inquires into any specific allegations of corruption against a Councillor.

What then is the resulting position ? Although the Legislature is silent on the point, does the law charge the respondent with any special duty in regard to the manner in which he should act " judicially " when he enters upon an inquiry into allegations against the petitioner or any other Councillor ? Certain general principles affecting the question have been laid down from time to time by the House of Lords in England, and serve as an authoritative guide for tribunals in other countries in which the same ideals of " natural justice " are enshrined. As Lord Loreburn said in *Board of Education v. Rice* [2], the respondent " *must act in good faith* and *listen fairly* to both sides (if there be two sides to a dispute) *for that is a duty lying upon everyone who decides anything* ". In the words of the dissenting judgment of Lord Sumner (then Hamilton L. J.) in *Rex v. Local Government Board ; ex parte Arlidge* [3] the procedure

[1] *(1943) A. C. 627.* [2] *(1911) A. C. 179.*

[3] *83 L. J. Q. B. 86 at pages 107 to 110.*

of a tribunal charged with judicial functions such as those of the respondent " must necessarily be judged by standards different from those of ordinary Court of Justice ". He must give the party who may be affected by the decision " the fullest opportunity of knowing what he has to meet and of meeting it . . . . and of correcting or contradicting the case against him put at its highest by the witness at the inquiry ". Lord Sumner's view was upheld by the House of Lords. *Vide Local Government Board v. Arlidge* [1]. The tribunal " must act *judicially* ", said Lord Haldane, " in the sense that it must deal with the question referred to it *without bias*, giving to each party an opportunity of presenting its case adequately. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every tribunal must be the same. In the case of a Court of law tradition has prescribed certain principles to which in the main the procedure must conform. *But what that procedure is to be in detail must depend on the nature of the tribunal* . . . . When therefore Parliament entrusts (a tribunal other than a Court of law) with judicial duties, *Parliament must be taken, in the absence of any declaration to the contrary, to have intended it to follow the procedure which is its own, and which is necessary if it is to be capable of doing its work efficiently* ". Referring to the earlier case of *Board of Education v. Rice* [2], Lord Haldane thought that the Board was entitled to obtain information in any way it thought best " provided that it gave a fair opportunity to a party to the controversy to correct or contradict any relevant prejudicial statement ". The opinion of Lord Shaw in the *Arlidge case* is no less apposite. The tribunal which is not a Court of law in the ordinary sense " must do its best to act justly and to reach just ends by just means ", he said. " If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means. In regard to these, certain ways and methods of judicial procedure may very likely be imitated ; and lawyer-like methods may find especial favour with lawyers. But that the judiciary should presume to impose its own methods on (other tribunals set up by Parliament) is a usurpation, and the assumption that the methods of natural justice are *ex necessitate* those of Courts of justice is wholly unfounded ".

In *Spackman's case* [3], the House of Lords again had occasion to make a pronouncement on the duty imposed on a tribunal, vested with legal authority to affect the rights of parties, to observe the principles of " natural justice " in the sense in which the term is used " in contrast with any formal or technical rule of law or procedure ". Lord Wright, following the observations of Lord Selbourne in an earlier case, adopted the view that " in the absence of special provisons as to how the tribunal is to proceed, the law will imply no more than that *the substantial requirements of justice shall not be violated*. It must give the party who may be affected by its decision an opportunity of being heard and of stating his case. It must give him notice when it will proceed with the matter, and it must act honestly and impartially, and not under the dictation

[1] *(1915) A. C. 120.* [2] *(1911) A. C. 179.*

[3] *(1943) A. C. 627.*

of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the *essence of justice*". As Lord Wright put it, "*the essential requirements of justice and fair play*" must be observed.

So far as I can understand the case of the petitioner in the present application, the procedure adopted by the respondent and criticised by the petitioner as objectionable is as follows. At the preliminary stages of his investigations, there were of course no parties to a dispute in the sense which is familiar in litigation proper. It therefore became necessary for the respondent to call for and collect such information as he could from every available source for the purpose of deciding whether any allegations of corruption which might be made against any particular Councillor merited investigation at all. At this stage he decided in the exercise of his undoubted discretion to receive information *in camera* and in some cases, apparently, an oath or affirmation was received before their statements were recorded. I cannot agree that either this process or the refusal to permit an informant or a witness to be legally represented during what might be described as the exploratory period of the respondent's investigation was in any sense improper or unjust. At the next stage of his investigations he decided to hold a formal inquiry into the allegations of corruption against each particular Councillor whose conduct in his opnion called for a full investigation. Some of these inquiries have already been held, and in each instance the Councillor concerned, against whom an adverse decision might result in a deprivation of civil rights, was not denied the opportunity of legal representation as required by section 14 of the Act of 1948. In some cases, apparently, an allegation implicated two Councillors, one as the corrupt receiver and the other as the corrupt giver of a bribe. In regard to such an allegation, it became necessary to record a specific and, in my judgment, a separate decision as to the alleged corrupt intentions of the alleged giver and the alleged receiver respectively of the alleged bribe. The inference which I draw from the facts deposed to in the petitioner's affidavit is that in these instances the respondent had decided to give each "accused" person (if I may use that term) an opportunity of meeting the imputation on his own character without the embarrassment of having the inquiry complicated by a contemporaneous investigation into the alleged motives of the "co-accused". Whether this be the ideal procedure to adopt in such a case, it is not for me to say but for the respondent to decide in the exercise of his discretion. All that I need hold, and all that I do hold, is that I cannot see how this procedure can be held to violate the principles of natural justice which the respondent is bound by law and by the dictates of his own conscience to observe. Indeed, if I may presume to say so, it is fairly clear that, in a hypothetical case, Councillor A might well consider it highly prejudicial to his interests if, in meeting an allegation that he had received a single bribe from Councillor B, he were tried together with Councillor B who has to face not only the charge of bribing Councillor A but additional charges of having systematically bribed other Councillors as well. There is no provision for the case of each Councillor to be tried by a separate tribunal.

In the present case the petitioner has been called upon to meet twenty-seven separate allegations of corruption. Some of these have in a sense been investigated in his absence (whether finally or not I do not know), but only, so far as I can see, with special reference to the motives of the alleged receiver of an alleged bribe. It has been argued for the petitioner that he was at any rate " implicated or concerned in " the matters under inquiry in these earlier proceedings within the meaning of section 14 of the Act of 1948, and that he was therefore entitled to be represented by his own lawyers at those inquiries. He complains that he was not given formal prior notice by the respondent of the nature of any of the allegations which " implicated " him, and that he therefore had " no opportunity to be represented by Counsel or to participate in " those inquiries where he has been implicated. The petitioner does not go so far as to assert that he did not *in fact* have knowledge from some other source that inquiries were being held into the conduct of other Councillors whom he is alleged to have bribed. Speaking for myself, I regret that I find it very difficult to satisfy myself that the procedure which the respondent had chosen to select for discharging the Commission entrusted to him had not become clear to the petitioner at a very early stage, and that the desirability or otherwise of applying for permission to be represented on each of those earlier occasions had not been submitted for the consideration of the very distinguished and competent legal advisers in charge of his case. The petitioner's affidavit is not communicative on this point.

The petitioner states in his affidavit that he " verily believes that the respondent has already recorded his findings on the allegations relating to the transactions " in which other Councillors are accused of having received bribes from him. If this statement of belief could be construed *as a factual assertion* that the respondent has already arrived at an *ex parte* decision that the petitioner is guilty of any of the twenty-seven allegations which he has been called upon to meet, I would not have hesitated to issue a rule *nisi* against the respondent, for in that event the essential pre-requisites of impartiality in the pending inquiry must necessarily be ruled out, and the case would *prima facie* resolve itself not so much into a question of " reasonable suspicion " as of a certainty of bias. The affidavit however falls very short of making any such assertion, even if the petitioner's mere statement of what he believes, *without any indication of the grounds of his belief*, had any relevancy at all.

In my opinion the petitioner had not made out a *prima facie* case to justify a rule *nisi* to prevent the respondent from holding an inquiry into the allegations of corruption which he has been called upon to meet. There is no reason of any kind, on the basis of the facts submitted to this Court, for holding that he will not be given the fullest opportunity of meeting these charges at a properly conducted inquiry, at which he may be legally represented in accordance with his statutory rights. No grounds, supported by legally admissible evidence, exist for apprehension that the principles of natural justice have or will be violated, or that the respondent has pre-judged the case. The respondent has been entrusted by the terms of his commission with onerous duties, and Parliament

has thought fit to superimpose on his functions the responsibility, should the necessity arise, of making decisions which would automatically affect the civic rights of persons selected by their constituents to administer the affairs of an important local authority. Nothing has been urged before me which entitles me to suspect that the confidence reposed in the respondent by the Governor-General and presumably shared by the Parliament which passed the Act of 1949 has been abused. Nor do I contemplate that there is a risk that the decision of the respondent, in dealing with the petitioner's case, would be influenced by the evidence of witnesses whom the petitioner will not be permitted to cross-examine at the pending inquiry. The apprehensions of bias which the petitioner claims to entertain are not based on substantial grounds. I therefore refuse his application for a mandate in the nature of a writ of prohibition against the respondent.

Application refused.