

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC  
OF SRI LANKA

*In the matter of an application for orders in the  
nature of Writs of Certiorari and Mandamus  
under and in terms of Article 140 of the  
Constitution of the Democratic Socialist Republic  
of Sri Lanka.*

CA/WRIT/562/2021

Dissanayake Mudiyansele Prasanna  
Madhusanka Bandara  
Temple Road, Siriwijayapura,  
Monaragala.

**Petitioner**

Vs.

1. University of Ruhuna  
Wellamadama, Matara.
2. Senior Prof. Sujeewa Amarasena  
Vice Chancellor,  
University of Ruhuna,  
Wellamadama, Matara.
3. Saman Chandana Ediriweera  
Deputy Vice Chancellor,  
University of Ruhuna,  
Wellamadama, Matara.
4. Mangala Chathura De Silva  
Proctor,  
University of Ruhuna,  
Wellamadama, Matara.
5. Renuka Priyantha  
Head of the Department,  
Department of Public Policy,  
Faculty of Humanities and Social  
Sciences,  
University of Ruhuna,  
Wellamadama, Matara.

6. Upali Pannilage  
Dean - Faculty of Humanities and  
Social Sciences,
7. Prof. S.D. Wanniarachchi  
Dean – Faculty of Agriculture,
8. Dr. K.G. Imendra  
Dean – Faculty of Allied Health  
Science,
9. Dr. H.P. Sooriyaarachchi  
Dean – Faculty of Engineering,
10. Dr. H.B. Asanthi  
Dean – Faculty of Fisheries and  
Marine Sciences & Technology,
11. Prof. L.P. Jayatissa  
Dean – Faculty of Graduate Studies,
12. Prof. P.A.P.S. Kumara  
Dean – Faculty of Management and  
Finance,
13. Prof. I.V. Devasiri  
Dean – Faculty of Medicine,
14. Prof. P.A. Jayantha  
Dean – Faculty of Science,
15. Dr. K.G.S.H. Gunawardana  
Dean – Faculty of Technology,
16. Srimal Wijesekara  
Member,
17. Isthihar Sufiyan  
Member,
18. Prof. Chandrani Liyanage  
Member,
19. Hemanthimala Wanigasinghe  
Member,

20. K.N. Samarasinghe  
Member,
21. Sumedha Kulathunga  
Member,
22. Sudath Jayasekara  
Member,
23. Mettananda Vidanagamachchi  
Member,
24. Dr. U.G. Karunaratna  
Member,
25. Himali Rathnaweera  
Member,
26. R.C. De Soyza  
Member,
27. M.G. Punchihewa  
Member,
28. Admiral Thisara Samarasinghe  
Member,
29. K.T. Chithrasiri  
Member,
30. Ven. Babaramde Amarawansha  
Member,
31. Prof. S. Subasinghe  
Member,
32. Prof. Sampath Gunawardhana  
Member,

The 6<sup>th</sup> to 32<sup>nd</sup> Respondents all of:  
The Members of the Council,  
University of Ruhuna,  
Wellamadama, Matara.

33. P.S. Kalugama  
Registrar,  
University of Ruhuna,  
Wellamadama, Matara

**Respondents**

**Before :** Sobhitha Rajakaruna J.

**Counsel :** Chamara Nanayakkarawasam for the Petitioner.

Hasini Opatha, SC for the Respondents.

**Supported on** : 21.02.2022

**Written submissions:** tendered on behalf of Petitioner: 11.03.2022

**Decided on** : 23.03.2022

**Sobhitha Rajakaruna J.**

The Petitioner is a final year student of the Faculty of Humanities and Social Sciences of the 1<sup>st</sup> Respondent University of Ruhuna ('University'). The Petitioner claims that he was a prominent student activist who did not succumb to the pressure of the Respondents, particularly of the 2<sup>nd</sup> to 4<sup>th</sup> Respondents who allegedly suppressed the democratic student activities. The Petitioner states that he is the President of the *de-facto* "Main Union" of the Students' Unions of the University.

The Petitioner's studentship has been suspended by a letter dated 15.10.2021, marked 'P4', after revealing the fact that the Petitioner has posted a chat message (through 'zoom') insulting the 2<sup>nd</sup> Respondent Vice Chancellor of the University ('Vice Chancellor') and the 3<sup>rd</sup> Respondent Deputy Vice Chancellor at the live launching ceremony of the updated website of the faculty of Humanities and Social Sciences of the University. In response to the said decision ('P4') of the Vice Chancellor, the Petitioner has written a letter dated 24.10.2021, marked 'P5' denying all allegations. The Vice Chancellor by his letter dated 27.10.2021, marked 'P6' confirming the decision taken in 'P4' has reminded the Petitioner that he had been advised even on a previous occasion not to engage in activities defaming the University.

The Petitioner in this application is seeking for an order in the nature of a writ of Certiorari quashing the said decision reflects in 'P4' and the decision contained in 'P6'. A writ of Mandamus is also being sought directing the 1<sup>st</sup> to 33<sup>rd</sup> Respondents to allow the Petitioner to participate at his examinations and academic activities pertaining to the Bachelor of Arts in Political Science (Special) Degree subjected to any disciplinary inquiry.

After filing this application in this Court, a report dated 13.01.2021, marked '2R1' has been submitted to the Vice Chancellor by the Investigations Committee consisting of three Professors who conducted the preliminary investigations upon the allegations against the Petitioner. As a result, the Council of the University, based on the recommendations made in the said report, decided and approved to issue a charge sheet against the Petitioner and such charges can be summarized as follows;

- i. Petitioner has committed an offence violating disciplinary rules and laws by publishing a defamatory 'chat comment' against the Vice Chancellor and the Deputy Vice Chancellor of the University at the live launching ceremony of the updated website of the Faculty of Humanities and Social Sciences of the Ruhunu University by participating under the login ID named as "Mudalige"
- ii. Petitioner has committed an offence by defaming the Vice Chancellor and the Deputy Vice Chancellor by publishing a defamatory 'chat comment' mentioned in the first charge
- iii. Petitioner has committed an offence by bringing the Faculty of Humanities and Social Sciences and its entire student population in to disrepute

In view of the above factual matrix, the Court need to ascertain whether the Petitioner has satisfied the initial threshold requirement which warrants this Court to issue formal notice of this application on the Respondents.

The prayer of the Petition focus only on the documents marked 'P4' and the 'P6' by which the Vice Chancellor has suspended the studentship of the Petitioner. However, the University has already completed the preliminary investigation against the Petitioner and the members of the Committee who conducted the preliminary inquiry has recommended that the above charges be inquired at a formal disciplinary inquiry. By virtue of the decision taken by the Council of the University which reflects in the document dated 28.02.2022 marked 'R4', a formal disciplinary inquiry is supposed to be held against the Petitioner in due course. Accordingly, no decision has been taken to expel the Petitioner from the

University other than the decision to suspend his studentship subjected to a formal disciplinary inquiry.

The Petitioner has not taken steps to amend the pleadings in order to challenge the report of the preliminary investigation committee ('2R1'). The grievance of the Petitioner at this juncture is that he would not be able to sit at the forthcoming examinations due to the said suspension and accordingly, the learned Counsel for the Petitioner moved that the suspension order reflected in letter marked 'P4' be quashed subject to any decision of the formal disciplinary inquiry.

The Petitioner submits that the decision contained in the said letter marked 'P4' is ultra vires as much as the Petitioner was not given any form of hearing prior to the said decision and also that the said decision is disproportionate and harsh. When a disciplinary action is contemplated against any student, the University authorities may conduct a preliminary investigation and if a prima facie case against such student is disclosed, a formal charge sheet can be issued on the student. The student will eventually get an opportunity to submit his detailed explanations to such charges. Anyhow the letter dated 24.10.2021 marked 'P5' can be considered as a primary explanation given by the Petitioner after the suspension of his studentship.

The following passage in the Article titled, "***Scholars, Students and Sanctions - Dismissal and Discipline in the Modern University***" written by Michael J. Beloff Q.C., who has fascinatingly described the Natural Justice as a bed of Procrustes, in Denning Law Journal, (Vol. 13 No. 1 (1998)) caught my eye;

*"Willis J<sup>1</sup>. said: "In my view, the audi alteram partem rule was complied with on the facts of this case by the defendant being allowed to make written representations for the board's consideration: ... it seems to me, on the facts, first that the defendant knew precisely the nature of the complaints which were made about him; secondly, that he was given an opportunity to state his case; and thirdly, that the tribunal acted in good faith. In those circumstances, it seems to me - on those three findings - that it is conclusive that there was no breach of the rules of natural justice in the defendant's exclusion from an oral hearing by the board. On the contrary he was, I think, treated with complete fairness throughout..."*

I am of the view that the Petitioner has already been afforded a fair opportunity on 28.12.2021 to make an oral statement at the preliminary investigation apart from his

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<sup>1</sup> Brighton Corporation vs. Parry (1972) 70 L.G.R. 576

written explanation given in the letter marked 'P5'. Further, it is pertinent to note that though, the Petitioner has averred malice there is no specific or direct evidence in the pleadings to sustain the plea of mala fide since the Court would not in general entertain allegations of bad faith against the repository of a power, unless bad faith has been expressly pleaded and properly enumerated in detail. (*See - Bandaranayke vs. Judicial Service Commission (2003) 3 SLR 101, Gunasinghe vs. Hon. Gamini Dissanayake (1994) 2 SLR 132*)

Apart from the assertions on not granting a hearing, the other point contended by the Petitioner is that in terms of by-laws approved by the Council of the University marked '2R3' (by-laws), the Vice Chancellor could suspend a student from attending lectures, courses or any other course of study at the University only for a period not exceeding two weeks. As opposed to that, the Respondents argue that in terms of clause 36 of the said by-laws, the Vice Chancellor has the authority and power to take appropriate actions in contrary to those by-laws and provisions if the Vice Chancellor thinks it is necessary to maintain discipline at the University.

Now it is needed to examine whether the nature of the charges levelled against the Petitioner entails a serious breakdown of discipline in the University upon which the Vice Chancellor could exercise his powers under clause 36 of the said by-laws.

I draw my attention to the statement given by the 2<sup>nd</sup> Respondent Vice Chancellor on 11.11.2021 at the preliminary investigations (annexure 1 to '2R1') by which the Vice Chancellor has submitted that the following wordings had been exhibited on the chat box by way of a post originated under the name 'Mudalige' immediately before the Vice Chancellor commenced his speech.

“සමන් වන්දන කියන පොල් බුරුවා අපේ අනන්‍යතාවයන් සියල්ල විනාශ කර දැමූ නියෝජ්‍ය උපකුලපති තනතුරට පත් වූ පසු ආචාර්යවරුන්ගෙන් සුදු පැහැති කොළ මත අත්සන් ලබා ගෙන ආචාර්යවරුන්ට තර්ජනය කළ අයෙකි. සුඵ්ව අමරසේන කියන පිස්සා අපගේ ස්වාධීනත්වයට හා ආචාර්යවරුන්ගේ කාර්ය භාරය හරි හැටියට අවබෝධ කර නොගත් කුහක අධමයෙකි. ආචාර්යවරුන්ට සිදු වූ සියලු බලපෑම් වලට වග කිය යුත්තා සුඵ්ව අමරසේනයි. සුඵ්ව අමරසේන හා සමන් වන්දන කියන අඤාදායකයින් පන්නා දමමු.”

The above statement has been made in reference to Saman Chandana and Sujewa Amarasena who are the Deputy Vice Chancellor and the Vice Chancellor respectively. It has been divulged at the preliminary investigations that the Petitioner has logged in to the

relevant zoom meeting through a single IP address intermittently, under the ID named as 'Prasanna Bandara' as well as under an ID named as 'Mudalige'. The Committee who conducted the preliminary inquiry has arrived at that conclusion based on the evidence, among other, shown in annexure 9 to '2R1'. Hence, the said committee has decided that the Petitioner is prima facie liable for the defamatory and abusive words published against the Vice Chancellor and the Deputy Vice Chancellor through 'Zoom'. The said decision has been taken based on the evidence made available at the said investigation.

The section 34(6) (b) of the Universities Act declares that a Vice Chancellor of a University shall be responsible for the maintenance of discipline within the University. The discipline is paramount in any educational institute and it is a duty of all stakeholders to safeguard the rights of the students who are eagerly awaiting to step into the next slab in their career path. It is to be observed that the law tends to protect the reputation of a person and not the character of a person. The defamation is being considered even as a delictual offence. The frequent definition to a libel is a malicious defamation expressed by writing, printing and by signs or pictures.

In that context, it's my view that committing an offence by defaming or abusing such disciplinary authority of a higher Educational Institution, in public, is a significant threat to the peace and harmony between the students and the authorities and also a serious breakdown of discipline. The criminal offences such as assault, sexual harassment and ragging which causes physical and mental injury are also in the same cluster of misbehavior creating serious breakdown of discipline. In a judicial review application this Court, in my view, can take in to account those ideologies to assess any purported malfunctioning of rule of natural justice in the process of taking decisions to maintain the high standards of discipline within a University.

His Lordship Justice A.H.M.D. Nawaz in agreement with me has held in ***Y.P.K. I. Ranasinghe vs. South Eastern University of Sri Lanka and others (CA/Writ/258/2019, decided on 24.09.2020)*** as follows;

*“Even though rules of natural justice are indispensable adjuncts to due process, it would appear that even rules of natural justice have no application in situations where it is manifest upon perusal of such evidence as in the case, that it is the very conduct of the Petitioner that has caused the consequences in the matter.”*

His Lordship Justice Nawaz further drawing his attention to the jurisprudence that was enunciated in the case of *Glynn vs. Keele University (1971) 2 All ER 89* has observed that the court had taken the view that in the case of a student who is found to be in flagrant violation of discipline in campus, it would be useless formality if rules of natural justice were to be insisted upon, where facts are quite clear and unambiguous as to the guilt of the person charged.

Shiranee Tilakawardane J. also has taken a similar view in *Rajakaruna and Others vs University of Ruhuna and Others (2004) 3 Sri. LR 141* where she has held that, a matter of discipline, unless it is patently capricious would be a matter that is wholly within the purview and control of the University. Tilakawardane J. has further observed as follows;

*“When deciding whether there was a violation of rules of natural justice by the Respondents it has to be emphasized that there are no strict standards and it depends on the circumstances of each case. Though in general courts have held that academic disciplinary proceedings require observance of principles of natural justice there are exceptions to this norm...”*

*“...Lord Denning M.R. in Hoffman-La Roch vs. Secretary of State for Trade and Industry (1975) AC-295 (at p. 320) states “A failure to observe the rules of natural justice does not render a decision or order or report absolutely void in the sense that it is a nullity.....if his (‘his’ is referred to the offender in that case by Lord Denning) conduct has been disgraceful and he has in fact suffered no injustice, he may be refused relief. see Glynn V. Keele University [1971] 1 W.L.R. 487 and Ward v. Bradford Corpn. (1971) 70 L.G.R. 27” (Emphasis added)*

In view of the foregoing, I hold that the charges against the Petitioner amounts to a serious breakdown of discipline in the University upon which the Vice Chancellor is entitled to exercise his authority under clause 36 of the by-laws marked ‘2R3’. Thus, based on the circumstances of this case, I am not inclined to accept the proposition advanced by the Petitioner that the authorities of the University are empowered only to suspend a student only for two weeks.

In spite of all above it is necessary to bear in mind that the Judicial review such as an application for writ of certiorari to quash a decision, the reviewing Court will eventually scrutinize the decision-making process. In the instant application, the authorities have now gone ahead beyond the impugned decision to suspend the studentship and have taken

afresh decision to conduct a formal disciplinary inquiry against the Petitioner which is yet to be concluded.

I am acutely aware that the order of this application may decide the fate of a university student and therefore, I need to extend my examination by taking in to account all possible aspects relevant to the questions of this application. In light of that I am reminded of the ancient kingdom of *Vajjian* (in India) which was fully enriched with principles of good governance in their administration. K.N. Jayatilleke in *Dhamma Man And Law* (published by Buddhist Cultural Center, Sri Lanka, 2000 at p. 81) has referred to the commentary to *Vajjian* Constitution which is to my mind deliberates astonishingly an inquiry process until the accused is being punished. The said commentary reads;

*“As for the ‘ancient Vajjian constitution’ it is said that when a thief was brought before the ancient Vajjian rulers, they handed him over to the judicial officers (vinicchaya-mahamatta). They investigated the facts and if they thought that he was not a thief they released him but if they suspected that he was a thief, they handed him over to the magistrates (voharika) without making any statement themselves. They in turn investigated matters and if they thought he was not a thief they released him but if they suspected that he was a thief they made him over to the justices (sutta-dhara)...they in turn to a panel of eight judges (atthakulika)...they in turn to the president, who investigated the case and if he thought that he was not a thief, released him but if he was convinced that he was a thief called for the book of precedents (paveni-pothhaka). There it is written down that such and such was punishment for such and such an offence. The president, thereupon compared his offence with those and ordered the appropriate punishment. Thus, the people who abided by the ancient Vajjian constitution had no grouse (against the state) because justice was done in accordance with the ancient tradition and they felt that if anyone was at fault it was themselves and not the officials (of the state). And as a result, they performed their tasks with a sense of responsibility. In this way the state prospered<sup>2</sup>”.*

Therefore, I take the view that the Petitioner also should be subjected to a process as explained above as there are allegations on his behaviour that gravely violates the sentiment or accepted standard of the community.

In this backdrop I need to emphasize that all allegations against the Petitioner are yet to be fully assayed at the formal disciplinary inquiry and still he has the opportunity to

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<sup>2</sup> Sumangala Vilasini, 11, P.T.S., p. 519

challenge the decision-making process of such formal inquiry. Moreover, this Court makes the observation that the members of the Committee appointed to hold the formal disciplinary inquiry should conclude the inquiry expeditiously following the due process.

In the circumstances, I am convinced that the allegations against the Petitioners are yet to be inquired in to at the formal disciplinary inquiry and the alleged conduct of the Petitioner is, prima facie, a flagrant violation of discipline in the University which disturbs the smooth administration of the authorities for the benefit of majority of students. Therefore, I am of the view that the Petitioner has no lawful ground at this stage to maintain this application and also to seek any discretionary relief from this Court. Hence, I proceed to refuse this application.

**Judge of the Court of Appeal**