

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

In the matter of an application for Writs
of Certiorari and Prohibition under
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

CA-WRT -195-20

Kurugama Tea Factory (Pvt) Ltd,
Kurugama Estate,
Muruthalawa,
20232,
Via Kandy.

Petitioner

VS

1. Sri Lanka Tea Board,
No.574, Galle Road,
Colombo 03.

2. Jayampathy Molligoda
Chairman,
Sri Lanka tea Board,
No. 574, Galle Road,
Colombo 03.

3. Anura Siriwardena,
Director General,
Sri Lanka Tea Board,
No.574, Galle Road,
Colombo 03.

4. E.A.J.K. Edirisinghe,
Tea Commissioner,
Sri Lanka Tea Board,
No.574, Galle Road,
Colombo 03.

Respondents

Before : **D.N. Samarakoon, J.**
B. Sasi Mahendran, J.

Counsel : Romesh de Silva P.C. with Haritha de Mel for the Petitioner
Milinda Gunathilaka ASG, PC with Navodi de Soyza SC, for
The Respondents.

Written 27.07.2022 (by the Petitioner)

Submissions : 03.08.2022 (by the Respondents)

On

Argued On : 03.06.2022

Decided On : 26.09.2022

JUDGEMENT

D.N. Samarakoon, J.

This Order concerns whether the Tea Controller ought to have given notice before making the decision to suspend the registration of the Petitioner.

(A) The question with regard to “natural justice”:

Section 8 (2) of the Sri Lanka Tea Control Act is reproduced below.

(2) Where the Controller is satisfied, after such inquiry as he may deem necessary:

(a) that the building, or equipment, or manner of operation, of any tea factory is not of a standard conducive to the manufacture of made tea of good quality; or

(b) that the owner of a tea factory has paid for green tea leaf bought by him for manufacture at such factory a price lower than the reasonable price payable as determined by the Controller having regard to the price fetched for made tea manufactured at that factory; or

(c) that the owner of a tea factory has delayed payment of the reasonable price, referred to in paragraph (b) for green tea leaf bought by him for manufacture at that factory,

The Controller may suspend or cancel where necessary, the registration of such tea factory or

- (i) In any case referred to in paragraph (b), direct any broker to whom the owner of such tea factory has sold any made tea manufactured at that factory, to deduct from the proceeds of such sale, an amount equivalent to the

difference between the reasonable price for green tea leaf as determined by the Controller and the actual price paid by such owner for the green tea leaf bought by him;

- (ii) in any case referred in paragraph (c), direct any broker to whom the owner of such tea factory has sold any made tea manufactured at that factory, to deduct from the proceeds of such sale, an amount equivalent to the reasonable price determined by the Controller for such green tea and to remit the sum so deducted to him, for payment by him, to the person supplying such green leaf to such factory.

The position of the first respondent, Sri Lanka Tea Board is that pursuant to samples of teas obtained in the presence of the representative of the Licensed Tea Broker of the petitioner and in the presence of two officers of the first respondent on 08.06.2020 and as the result of laboratory tests conducted at the Sri Lanka Tea Board, the report dated 24.06.2020 which is R5 showing that the said samples were contaminated with 135 mg/g and 123 mg/g of sucrose, whereas the permissible level of sucrose for black tea in mid elevation, as per circular R2a is 25mg/g , by letter dated 30.06.2020 which is P2, the brokers were informed that an investigation carried out by the first respondent revealed that the operation of the factory was not conducive **to manufacture made tea of good quality** and the registered brokers were informed not to accept teas under any garden mark of the petitioner's factory for sale through any channel and while the letter marked P2 would have reached the tea brokers on or about two days from the date of posting, on 01.07.2020, that is one day after the date of P2, the petitioner was informed by the first respondent that the petitioner should stop manufacturing tea, the endorsement to which effect made on the Tea Book of the petitioner dated 01.07.2020 is marked P3 and thereafter on 02.07.2020 two directors of the petitioner were present before the first

respondent where an oral hearing took place and the said directors have signed the proceedings of the said hearing which is marked R7. The aforesaid is the narration of facts as done from paragraphs 6 to 26 of the respondents written submissions dated 02.08.2022 filed in this court.

One of the main allegations of the petitioner is that before the said suspension of the license was made, the petitioner was not heard and therefore there is a breach of the rules of natural justice.

The first respondent took up several positions in reply to the said allegation, which are (i) that the suspension was only a temporary measure prior to a formal inquiry being held and hence there was no necessity to hear the petitioner, (ii) in certain circumstances a test or examination will be a sufficient substitute for an oral hearing, (iii) the suspension of license was the only mechanism to prevent contaminated tea from being sold under the brand of “Ceylon Tea” and, (iv) that since urgent measures or immediate steps should have been taken to prevent contaminated tea from going into international market thus harming the reputation for “Ceylon Tea” suspension of the license had to be done before the petitioner was heard.

On 03.06.2022, when this matter was argued, the Court decided to hear parties on the preliminary question of the applicability of section 8(2), **in that, whether the petitioner should have been given notice and thus given an opportunity of being heard prior to the suspension or whether the suspension was an order which the first respondent could have made ex parte**, since it appeared to the Court that the decision of the case will depend on the answer to the said question. When the Court invited parties to tender written submissions on this question, the learned ASG for the respondents indicated that he will file written submissions on the entire case. The Court then allowed parties to file written submissions on the entire matter, if they so desire. The petitioner has filed written submissions only on the said preliminary question. It appears that the respondents have filed written submissions on the entire case.

The respondents cite, at paragraph 66 of the aforesaid written submissions **SC Appeal No. 47/2011, [Referred to in paragraph 66 of the aforesaid Written Submissions of the Respondent]** S.C. Minutes dated 09.03.2015 decided by K. Sripavan C.J. That is the case of **Paudgalika Tha Kamhal Himiyange Sangamaya also known as The Private Tea Factory Owners Association now known as The Sri Lanka Tea Factory Owners Association and others vs. Jayantha Edirisinghe, Tea Commissioner (Acting) and others.**

“The Act does not envisage the procedure to be followed by the Tea Commissioner in determining the reasonable price. The following extract from the speech of Lord Pearson in **Pearlberg v. Varty [1972] 1 W.L.R. 534 at 537** is worth reproducing.

“A tribunal to whom judicial or quasi-judicial functions are entrusted is held to be required to apply those principles [i.e. the rules of natural justice] in performing those functions unless there is a provision to the contrary. But where some person or body is entrusted by Parliament with administrative or executive functions there is no presumption that compliance with the principles of natural justice is required, although, as 'Parliament is not to be presumed to act unfairly,' the courts may be able in suitable cases (perhaps always) to imply an obligation to act with fairness.”

It is therefore necessary that the Tea Commissioner adopts a fair procedure although there may not be a hearing of the kind normally required by natural justice”

However, this was said in response to a proposition that arose in that case, which is,

“(v) That in any event, the decision of the Respondent fixing a **“Reasonable Price Formula”** has been made without giving the

Petitioner or its members an opportunity of being heard thus violating the fundamental legal principle of audi alteram partem”.

It is to be noted that in **Pearlberg vs. Varty 1972, [Referred to in paragraph 66 of the aforesaid Written Submissions of the Respondent]** the House of Lords has said, “But where some person or body is entrusted by Parliament with administrative or executive functions there is no presumption that compliance with the principles of natural justice is required, **although, as 'Parliament is not to be presumed to act unfairly,' the courts may be able in suitable cases (perhaps always) to imply an obligation to act with fairness.**”

It appears to this court that how to exercise the obligation to act with fairness should depend on the facts and circumstances of the case. However, the words within brackets (perhaps always) implies that in no circumstances the decision maker may act without fairness.

In the case before Sripavan C.J. the relevant section empowered the Tea Commissioner to determine the reasonable price payable having regard to the price fetched for made tea at that factory. Hence it was decided that the procedure to be followed must be fair. But it is a different question whether the procedure followed by the first respondent in the present case in suspending the operation of the petitioner is fair. This question will be considered in the light of several authorities cited by the respondents.

In paragraph 68 of the aforesaid written submissions the respondents cite the case of **Wickremasinghe vs. Ceylon Electricity Board and another [1982] 2 SLR 607. [Referred to in paragraph 68 of the aforesaid Written Submissions of the Respondent]**

In that case L. H. De Alwis J. said at page 614 – 615 “In *De Verteuil vs. Knaggs*, (4) their Lordships of the Privy Council said "**The particular form of inquiry must depend on the conditions under which the discretion is exercised in any particular case, and no general rule**

applicable to all conditions can be formulated. It must, however, be borne in mind that there may be special circumstances which would justify a Governor, acting in good faith, to take action even if he did not give an opportunity to the person affected to make any relevant statement or to correct or controvert any relevant statement brought forward to his prejudice. **For instance, a decision may have to be given on an emergency, when promptitude is of great importance; or there might be obstructive conduct on the part of the persons affected**" The application of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. 'In the application of the concept of fair play there must be real flexibility.' Sometimes urgent action may have to be taken on grounds of public health or safety, for example to seize and destroy bad meat exposed for sale or to order the removal to hospital of a person with an infectious disease. In such cases the normal presumption that a hearing must be given is rebutted by the circumstances of the case. Wade Administrative Law, 4th Ed.p. 451". (emphasis added in this order)

In the aforesaid case the question was laying of an electricity transmission line across two lands belonging to the petitioner. Section 15(2) of the Electricity Act requires that before a licensee enters on any land he shall give 30 days-notice stating as fully and accurately as possible the nature and extent of the acts intended to be done where the notice should be substantially in the prescribed form. The petitioner alleged that notice P2 dated 06.04.1982 did not set out the proposed route for installation of electric line over the lands of the petitioner. However, P2 disclosed as the petitioner admitted in his affidavit, that the notice did state that the second respondent intended to survey the lands, lop off the branches of the trees, mark the trees standing there or, cut down the trees, dig trenches, erect posts, affix wires and perform other acts. The Court of Appeal decided that the first respondent could not possibly, at that stage, give any indication as to the route along which the transmission lines should be taken over the

lands before he inspected and surveyed the land and hence notice P2 was a sufficient compliance with section 15 (2).

Section 15(4) provided for lodging of objections within 14 days of the notice. Section 15 (6) requires the Government Agent to hold an inquiry and to give the petitioner an opportunity to be heard. Section 15(7) provided that upon the conclusion of the inquiry the Government Agent may subject to such terms, conditions and stipulations as he thinks fit, authorize or prohibit any of the acts mentioned in the aforesaid notice.

The inquiry into the petitioner's objections was commenced on the directions of the second respondent by the additional Government Agent with notice to the petitioner, but before it was concluded, the Government Agent inspected the land himself and made the order P3. Since the inquiry was not concluded it was submitted that the petitioner was not given a full hearing, in violation of the principles of natural justice.

It was said at page 611 "When the matter came up for, hearing before this Court on 30.8.82, in view of the urgency of the matter it was agreed that the Government agent should again visit the land in the presence of the petitioner after giving her notice, and decide upon a convenient route for the laying of the transmission lines causing as little damage as possible, to the petitioner's land. The petitioner was permitted to raise any objection at that inspection. It is after the second inspection that the 2nd respondent filed his report dated 1.9.82 in Court. The inspection was carried out on that day by the 2nd respondent in the presence of the petitioner's husband and the Electrical Superintendent of the Ceylon Electricity Board. After taking into consideration the objections raised by the petitioner's husband, the 2nd respondent, saw no reason to vary the order he had made earlier and was of the view that the 1st respondent should be granted permission to install the transmission lines across the petitioner's land as pointed out by the 1st respondent and to cut down the necessary trees".

The Court of Appeal also said at page 613 – 614 "The contention of learned Counsel was that sub-sections 4,6 and 7 of section 15 of the Act

contemplate an inquiry at which oral evidence and submissions are made and that an inspection of the land is no substitute for it. He relied on the case of **The Ceylon Co-operative Employees Federation vs. The Co-operative Employees Commission, (3)** where it was held that the words "to hear appeals out of disciplinary orders" prima facie appears to bring in the rule of audi alteram partem and the right to make oral submissions. **De Smith in Judicial Review of Administrative Action, 4th Ed. page 192** however states "Doubtless there are also many cases where procedures involving inspection, testing or examination can be regarded as adequate substitutes for hearings."

Therefore, the Court of Appeal considered that although a full hearing has not been given, on the authority of De Smith, there are cases where procedures involving inspection, testing or examination will be regarded as adequate substitutes for fair hearing.

In the present case the respondents may argue that there was testing and examinations and it is an adequate substitute for hearing. However, it must be noted that in the case decided by L.H. De Alwis J. the inspection was done in the presence of the petitioner's husband. In the present case although a testing was done it was not carried out with notice to the petitioner.

L.H. De. Alwis J. also considered the urgency of the matter where his lordship said at page 616 "In the present case the supply of adequate electrical power to the Victoria Project is of the utmost urgency for the implementation of the Accelerated Mahaweli Programme. As the description of this scheme connotes it is a matter of great public urgency. There cannot be any delay. The delay in taking the electricity transmission lines across the petitioner's land not only impedes the progress of this scheme but also involves the Government in very heavy expenditure of lakhs of rupees on the purchase of diesel to operate the generators that are now used to provide the additional power to the Victoria Project. The affidavit of the Senior Central

Engineer attached to the Ceylon Electricity Board, which is filed of record, bears this out”.

Therefore, the Court of Appeal considered what it called “a great public urgency”. As Lord Diplock said in **Kodeeswaran vs. the Attorney General (1969)** with regard to the Proclamation of 1799 A.D, that **the language used must be understood in the circumstances of the particular era**, the term “Great public urgency” should also be understood in the circumstances that prevailed in this country in 1982 where the then Government took steps to complete a project in an accelerated way.

The respondent in the present case also says that there was an urgency in this matter too, to prevent the “contaminated” teas from reaching the international market. However according to the narration of facts by the respondents themselves, the samples of teas were obtained on 08.06.2020, the report has come on 24.06.2020, and the Petitioner was suspended with effect from 30.06.2020. **What happened from 24.06.2020 to 30.06.2020 is not explained**, while the more significant question is that if there had been such an emergency of stopping the “contaminated” teas from reaching the international market, it appears that the suspension should have been done on 24.06.2020 itself, without waiting for 6 days. The petitioner could have been informed on 24th itself or at least on the 25th that its teas are contaminated, thus giving an opportunity for the petitioner to explain, as the first respondent had taken 6 days to suspend the petitioner.

The respondents in paragraph 85 of the aforesaid written submissions refer to the case of **De Verteuil vs. Knaggs [1918] UKPC 29**.

A part of this case was cited by L.H. De Alwis J. at page 614 which said, “In De Verteuil vs. Knaggs, (4) their Lordships of the Privy Council said “The particular form of inquiry must depend on the conditions under which the discretion is exercised in any particular case, and no general rule applicable to all conditions can be formulated. It must, however, be borne in mind that there may be special circumstances which would justify a Governor, acting in good faith, to take action even if he did not give an

opportunity to the person affected to make any relevant statement or to correct or controvert any relevant statement brought forward to his prejudice. For instance, a decision may have to be given on an emergency, when promptitude is of great importance; or there might be obstructive conduct on the part of the persons affected"

Joseph de Verteuil, Appellant vs. the Hon. Samuel William Knaggs, acting Governor and another respondent [Referred to in paragraph 85 of the aforesaid Written Submissions of the Respondent] is a case from the Supreme Court of Trinidad and Tobago which was decided by the Judicial Committee of the Privy Council in 1918. The facts of the case as described by Lord Parmoor reads,

“The appellant has been, for several years, the owner of the La Gloria estate, in the Ward of Upper Caroni, in the Island of Trinidad. The respondent the Honorable Samuel William Knaggs, C.M.G., was at all material dates the acting Governor of the Colony of Trinidad and Tobago, and the respondent the Honorable Arnauld de Boissiere was at all material dates the Head of the Immigration Department of the said Colony and the Protector of Immigrants. The question involved in the appeal is whether an order made by the acting Governor for the transfer of the indentures of the immigrants, indentured on the said La Gloria estate, is a valid and effective order. This question was answered in the negative by Mr. Justice Blackwood Wright and in the affirmative by the Supreme Court sitting in appeal. The contention of the appellant is that the order of Mr. Justice Blackwood Wright was correct, and that the order of the Supreme Court should be reversed.”

To cite the entire passage in the relevant part of the speech of Lord Parmoor (of which only a part has been quoted by L. H. De. Alwis J. and the respondents in the present case) it is thus,

“ it must, however, be borne in mind that there may be special circumstances which would justify a Governor, acting in good faith, to take action even if he did not give an opportunity to the person

affected to make any relevant statement, or to correct or controvert any relevant statement brought forward to his prejudice. For instance, a decision may have to be given on an emergency, when promptitude is of great importance; or there might be obstructive conduct on the part of the person affected. **Their Lordships, however, do not find any suggestion of such conditions in the case under appeal.** Moreover, in this case the Supreme Court, on the evidence before them, has found that the Acting Governor did give the appellant a fair opportunity of being heard and of meeting statements made to his prejudice, and, for reasons given later, their Lordships fully concur in this finding.”

The words “**their Lordships, however, do not find any suggestion of such conditions in the case under appeal**” shows that what was said earlier was in obiter. Besides the next part says, the Supreme Court has found that the Acting Governor did give the appellant a fair opportunity of being heard and of meeting statements made to his prejudice with which finding their Lordships concurred.

The Judicial Committee of the Privy Council next cited **The Board of Education v. Rice (1911, A.C. 179)** and the passage quoted from that case shows that the decision of their Lordships was that a fair hearing should have been given for it was said,

“The statement of principle made in that case by the Lord Chancellor (Earl Loreburn) is, however, in the opinion of their Lordships applicable to the conditions under which the decision in this case was given by the Acting Governor :-

“In such cases the Board of Education have to ascertain the Law and also to ascertain the facts. I need not add that in doing either they must act in good faith **and fairly listen to both sides, for that is a duty lying upon everyone who decides anything.** But I do not think they are bound to treat such a question as though it were a trial..... They can obtain

information in anyway they think best, **always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view.**”

Lord Parmoor also said in His Lordship’s speech,

“There is some discrepancy as to the statements made at this interview, but the material factor is that the appellant and his manager were granted a fair opportunity of placing before the acting Governor their answer to the allegations made in the letter of the Protector of Immigrants”.

It was also said,

“It appears to their Lordships that the correspondence, to which reference has been made, shows that the acting Governor did not proceed without giving fair notice to the appellant of the charges made against him, or without giving him a fair opportunity to make an answer to such charges”.

In the aforesaid case decided by L.H. de Alwis J., his lordship has at page 615 cited a passage from **In re Pergamon Press Ltd., (1971) Ch. D. 388**, in which it was said,

“In re Pergamon Press Ltd., (5) Sachs, L.J. said at page 403: "In the application of the concept of fair play, there must be real flexibility, so that very different situations may be met without producing procedures unsuitable to the object in hand. That need for flexibility has been emphasized in a number of authoritative passages in the judgments cited to this Court. [Russel vs. Duke of Norfolk [1949] 1 ACR 109, Wiseman v Borneman [1971] A. C. 297. It is only too easy to frame a precise set of rules which may appear impeccable on paper and which may yet hamper, lengthen and indeed, perhaps even frustrate the activities of those engaged in investigating or otherwise dealing with matters that fall within their proper sphere. In each case

careful regard must be had to the scope of the proceeding, to the source of its jurisdiction (statutory in the present) the way in which it normally falls to be conducted and its objective."

What Lord Justice Sachs actually said was, "In the application of the concept of fair play, there must be real flexibility, so that very different situations may be met without producing procedures unsuitable to the object in hand. That need for flexibility has been emphasized in a number of authoritative passages in the judgments cited to this Court. In the forefront was that of Lord Tucker in *Russel vs. Duke of Norfolk* and the general effect of his views has been once again echoed recently by Lord Guest, Lord Donovan and Lord Wilberforce in *Wiseman vs. Borneman*, 1969 1 Weekly Law Reports at pages 713,716 and 722 respectively.

"It is only too easy to frame a precise set of rules which may appear impeccable on paper and which may yet unduly hamper, lengthen and, indeed, perhaps even frustrate (see per Lord Reid in *Wiseman vs. Borneman* at 710) the activities of those engaged in investigating or otherwise dealing with matters that fall within their proper sphere. In each case careful regard must be had to the scope of the proceedings, the source of its jurisdiction (statutory in the present case), the way in which it normally falls to be conducted and its objective".

The judgment of ***In re Pergamon Press Ltd., 1970***, [Referred to in **paragraph 76 of the aforesaid Written Submissions of the Respondent**] comprises of three speeches made by **Lord Denning, the Master of the Rolls, Lord Sachs and Lord Buckley**. The facts of the case, in brief as narrated in the speech of Lord Sachs were,

"This was a company in which the capital as valued on the London Stock Exchange ran into millions of pounds. The take over or merger bid involved 25 million pounds. The dealings on the London Stock Exchange was suspended and, what is more, we were informed in this Court that they remain suspended. That is a matter that must be of grave importance to a large number of individual shareholders in this

company. Accordingly, the situation was one which called for as much speed as practicable in the investigation”.

The American company Leasco made a takeover bid, which they subsequently withdrew. The price of the shares slumped. Dealings were suspended. The Board of Trade ordered an investigation. Two inspectors were appointed. The tussle between the Inspectors and the Directors of The Pergamon Press was described by Lord Denning, as reproduced below,

“A little later the Inspectors called on the Directors to give evidence. Each of them refused. Typical was the attitude of Mr. Robert Maxwell himself. He came with his Solicitor, Mr. Freeman, to the place where the Inspectors were meeting. He gave his name and address and said that he was the holder of the Military Cross and a Member of Parliament. Then Mr. Stable, a Queen’s Counsel, one of the Inspectors, asked him this simple question, “When did you first become associated with Pergamon Press Ltd?” to which Mr. Maxwell replied, “Mr. Stable, in view of the submissions made on my behalf by Mr. Freeman, I respectfully refuse to answer any further questions unless I am ordered to do so by the Court”. This attitude left the Inspectors with no alternative but to report the refusal to the Court”.

Having thus explained the background to the problem that arose in re Pergamon Press Ltd., this Court wishes to quote the next five passages from the speech of the Master of Rolls, because His Lordship lucidly explained, the duty of non judicial bodies to adhere to the rule of audi alteram partem, which is also the question in the present case.

“The Directors appeal to this Court. Mr. Morris Finer, on behalf of Mr. Maxwell, claimed that they had a right to see the transcripts of the evidence of the witnesses adverse to them. Mr. Sherrard, on behalf of Mr. Clark, claimed a right to cross examine the witnesses. Mr. Phillips, on behalf of Mr. Street, claimed that they ought to see any proposed finding against them before it was included finally in the report. In short, the Directors claimed that the Inspectors should

conduct the inquiry much as if it were a judicial inquiry in a Court of Law in which Mr. Maxwell and his colleagues were being charged with an offence.

It seems to me that this claim on their part went too far. This inquiry was not a Court of Law. It was **an investigation in the public interest**, in which all should surely cooperate, as they promised to do. **But if the Directors went too far on their side, I am afraid that Mr. Fay, for the Inspectors went too far on the other.** He did it very tactfully, but he did suggest that in point of law, the Inspectors were not bound by the rules of natural justice. **He said that in all the cases where natural justice had been applied hitherto, the tribunal was under a duty to come to a determination or decision of some kind or other. He submitted that when there was no determination or decision but only an investigation or inquiry, the rules of natural justice did not apply.** He cited Parry Jones vs. The Law Society, 1969 Chancery 1, to support his proposition.

I cannot accept Mr. Fay's submission. It is true, of course, that the Inspectors are not a Court of Law. **Their proceedings are not judicial proceedings.** See re Grosvenor Hotel in (1897) 76 Law Times, 337. **They are not even quasi judicial, for they decide nothing; they determine nothing. They only investigate and report.** They sit in private and are not entitled to admit the public to their meetings. See the Hearts of Oak case in 1932 Appeal Cases, 392. They do not even decide whether there is a prima facie case, as was done in Wiseman vs. Borneman, 1969 3 Weekly Law Reports, 706.

But this should not lead us to minimize the significance of their task. They have to make a report which may have wide repercussions. **They may, if they think fit, make findings of fact which are very damaging to those whom they name. They may accuse some; they may condemn others; they may ruin reputations or careers.** Their report may lead to judicial proceedings. It may expose persons

to criminal prosecutions or to civil actions. **It may bring about the winding up of the Company** and be used itself as material for the winding up. See re S.B.A. 1967 1 Weekly Law Reports, 799. Even before the Inspectors make their report, they may inform the Board of Trade of facts which tend to show that an offence has been committed – see section 41 of the 1967 Act. When they do make their report, the Board are bound to send a copy of it to the Company and the Board may, in their discretion, publish it, if they think fit, to the public at large.

Seeing that their work and their report may lead to such consequences, I am clearly of opinion that the Inspectors must act fairly. This is the duty which rests on them, as on many other bodies, even though they are not judicial, nor quasi judicial, but only administrative: See Crookfords case, 1970 2 Weekly Law Reports, 1009. **The Inspectors can obtain information in any way they think best, but before they condemn or criticize a man, they must give him a fair opportunity for correcting or contradicting what is said against him.** They need not quote chapter and verse. An outline of the charge will usually suffice”.

What is in “**bold**” print, in those five passages may be read, keeping in mind the question raised in this case; the investigation, the report, the suspension. Was there a fair opportunity for correcting or contradicting?

The respondents in the present case with regard to the question of adhering to the rule audi alteram partem also cite the case of **Faleel vs. Moonesinghe [1994] 2 SLR 301** and relies upon passages quoted in that case from the speeches of Lord Denning and Lord Geoffrey Lane from the case of Lewis vs. Heffer [1978] 3 All ER 354.

In **Faleel vs. Susil Moonesinghe and others 1992 [Referred to in paragraph 87 of the aforesaid Written Submissions of the Respondent]** decided by A. Ismail J. in the Court of Appeal quoted the passages reproduced below from pages 315 to 317.

“The submission on behalf of the petitioner is that there was no situation of emergency, a critical situation, a destabilising factor or a compelling reason to resort to a holding operation by way of a suspension. Learned Counsel referred to the judgment of Lord Denning M. R. in *Lewis v. Heffer* (3) in which he used the term holding operation after quoting Megarry J. in *John v. Rees* (4). It arose in this manner. **In the course of the submissions in *John v. Rees* it was the contention of the counsel for the plaintiff that the rules of natural justice apply not only to expulsion or dismissal, but also to suspension from office**, and among the cases cited by him were *Burn v. National Amalgamated Labourers' Union of Great Britain and Ireland* (5), Megarry J. said at page 305: "Burn's case (68) concerned a trade union. A rule required the executive committee of the union to "take every means to secure the observance of the Union's rules", and authorised it to "suspend, expel and prosecute members" and to "remove any incompetent or insubordinate officer". The committee passed a resolution removing the plaintiff from any office held by him, and preventing him from holding any delegation on behalf of the union for five years. The plaintiff had been treasurer of his branch, and was chairman of it at the date of the resolution. The complaint against him related solely to his conduct as treasurer; and the resolution was passed without hearing the plaintiff or giving him any opportunity of explaining. P. G. Lawrence, J., construed the rules strictly, and held that the language of the rule did not authorise the resolution that was passed. He went on to consider the position if he were wrong in thus construing the rules, and said: "I have no hesitation in holding that the power to suspend or expel a member for acting contrary to the rules is one of a quasi-judicial nature." He accordingly held the resolution bad because the plaintiff had not been given an opportunity of being heard in his defence. **In relation to the rule of natural justice, P. O. Lawrence, J., thus made no distinction between suspension and expulsion. I would**

respectfully concur: in essence suspension is merely expulsion pro tanto. Each is penal, and each deprives the member concerned of the enjoyment of his rights of membership or office. **Accordingly, in my judgment the rules of natural justice prima facie apply to any process of suspension in the same way that they apply to expulsion.** Lord Denning in *Lewis v. Heffer* (5), having quoted the last few lines above said: "Those words apply, no doubt, to suspensions which are inflicted by way of punishment, as for instance when a member of the Bar is suspended from practice for six months, or when a solicitor is suspended from practice. But they do not apply to suspensions which are made, as a holding operation, pending enquires. Very often irregularities are disclosed in a government department or in a business house; and a man may be suspended on full pay pending inquiries. Suspicion may rest on him; and so he is suspended until he is cleared of it. No one, so far as I know, has ever questioned such a suspension on the ground that it could not be done unless he is given notice of the charge and an opportunity of defending himself, and so forth. The suspension in such a case is merely done by way of good administration. A situation has arisen in which something must be done at once. The work of the department of the office is being affected by rumours and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended. At that stage the rules of natural justice do not apply": See *Furnell v. Whangarei High Schools Board* (6). Geoffrey Lane LJ. in the course of the same judgment at page 360 said; "So far as the rules of natural justice are concerned, it is suggested that before the NEC suspended the committees and officers they should have been heard, and the fact that they were not heard was a breach of the rules of natural justice sufficient to invalidate the suspension. It seems to me that this suspension was an administrative action by which by its very nature had to be taken immediately. It was impossible for the NEC at that stage, and I emphasise those words 'at that stage', to hear both

sides. In most types of investigation there is in the early stages a point at which action of some sort must be taken and must be taken firmly in order to set the wheels of investigation in motion. Natural justice will seldom if ever at that stage demand that the investigator should act judicially in the sense of having to hear both sides. **No one's livelihood or reputation at that stage is in danger. But the further the proceedings go and the nearer they get to the imposition of a penal sanction or to damaging someone's reputation or to inflicting financial loss of someone, the more necessary it becomes to act judicially, and the greater the importance of observing the maxim, audi alteram partem.** It seems to me in the present case, so far as one can judge on the facts before us, natural justice does not demand that anyone should be invited to provide an explanation or excuse before that suspension was imposed."

The judgment of **Lewis vs. Heffer 1978, [Referred to in paragraph 87 of the aforesaid Written Submissions of the Respondent]** consisted of the speeches of Lord Denning, Master of the Rolls, Lord Ormrod and Lord Geoffrey Lane.

To quote the first passage relied upon by the first respondent in the speech of Lord Denning in full it was said.

"But then comes the point: Are the National Executive Committee to observe the rules of natural justice? In John v. Rees Mr. Justice Megarry held that they were. He said (at page 397): "Suspension is merely expulsion pro tanto. Each is penal, and each deprives the member concerned of the enjoyment of his rights of membership or office. Accordingly in my judgment the rules of natural justice prima facie apply to any such process of suspension in the same way that they apply to expulsion."

"Those words apply, no doubt, to suspensions which are inflicted by way of punishment: as for instance when a member of the bar is suspended from practice for six months, or when a solicitor is

suspended from practice. But they do not apply to suspensions which are made, as a holding operation, pending enquiries. Very often irregularities are disclosed in a Government department or in a business house: **and a man may be suspended on a full pay pending enquiries.** Suspicion may rest on him: and so, he is suspended until he is cleared of it. No one, so far as I know, has ever questioned such a suspension on the ground that it could not be done unless he is given notice of the charge and an opportunity of defending himself, and so forth. The suspension in such a case is merely done by way of good administration. A situation has arisen in which something must be done at once. The work of the department or the office is being affected by rumours and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended. At that stage the rules of natural justice do not apply, see Furnell's case (1973) Appeal Cases 660." (page 17 of the judgment)

The next passage quoted from Lord Geoffrey Lane's speech is reproduced below.

"So far as the rules of natural justice are concerned, it is suggested that before the National Executive Committee suspended the committee and officers they should have been heard, and the fact that they were not heard was a breach of the rules of natural justice sufficient to invalidate the suspension. It seems to me that this suspension was an administrative action which by its very nature had to be taken immediately. It was impossible for the National Executive Committee at that stage- and I emphasise those words "at that stage" – to hear both sides. In the most types of investigation there is in the early stages a point at which action of some sort must be taken and must be taken firmly in order to set the wheels of investigation in motion. Natural justice will seldom if ever at that stage demand that the investigator should act judicially in the sense of having to hear both sides. No one's livelihood or reputation at that stage is in danger.

But the further the proceedings go and the nearer they get to the imposition of a penal sanction or to damaging someone's reputation or to inflicting financial loss on someone the more necessary it becomes to act judicially, and the greater the importance of observing the maxim audi alteram partem. It seems to me in the present case, so far as one can judge on the facts before us, natural justice does not demand that anyone should be invited to provide an explanation or excuse before that suspension was imposed." (page 28 of the judgment)

The facts of the case in very brief appear in the passage reproduced below from the speech of Ormrod J.,

"Mr. Lewis puts his case for saying that the National Executive Committee on the 26th October, 1977 has acted ultra vires in suspending the constituency party General Committee and Executive Committee and the officers on two broad grounds. First, he says that in law the National Executive Committee has no power to suspend the various committees and officers or, if it has power to do so, Mr. Lewis contends that it is bound to act in accordance with the requirement of natural justice." (page 21 of the judgment)

Ormrod J., said in his speech,

"The remaining point of law is the question of natural justice. This is a highly attractive and potent phrase and as such, in my judgment, must be used very carefully. Sometimes it is used to mean that the person or persons concerned must be given adequate opportunity of making representations, which means adequate notice of the complaint and an opportunity of being heard: sometimes it has a much less precise meaning. It is argued by Mr. Lewis that the National Executive Committee are bound to act in accordance with natural justice. If that means that the National Executive Committee must act fairly, there is no dispute. If it means that it must give particulars of complaints and an opportunity of being heard by all the

persons concerned before ordering a suspension of a local party such as here, then there is a real dispute because, of course, the National Executive Committee says it is quite impracticable to do so. They have to hold an inquiry to get at the facts first, and it is reasonable to suspend all concerned pending such an enquiry.

In the case of Paul Walls Furnell Vs. Whangarei High Schools Board (1973) Appeal Cases 660, it was said at page 679 by Lord Norris: “it has often been pointed out that the conceptions which are indicated when natural justice is invoked or referred to are not comprised within and are not to be confined within certain hard and fast and rigid rules: see the speeches in Wiseman vs. Borneman (1971) A.XC. 297. **Natural justice is but fairness, writ large and juridically.** It has been described as ‘fair play in action’. Nor it is a leaven to be associated only with judicial or quasi-judicial occasions. But as was pointed out by Tucker L.J. in Russel vs. Duke of Norfolk (1949) All E.R. 109, 118, the requirements of natural justice must depend on the circumstances of each particular case and the subject matter under consideration.” (page 24 and 25 of the judgment)

Lord Denning further said in his speech,

“Now I turn to the suspension of Mr. Lewis and Mr. McCormick. To restate the facts: On the 5th December, 1977 the Organisation Committee recommended their suspension. It was to come before the National Executive Committee on the 14th December, 1977 to be implemented. Mr. McCormick and Mr. Lewis got to hear of this and applied to Mr. Justice Jupp for an injunction: and he granted it. But it happened that the National Executive Committee met on that very day, the 14th December, 1977 – and, as a result of legal advice- did not implement the recommendation. They had been advised by their lawyers (and it seems on the additional material that on the 7th December they had taken the advice of their lawyers) that they could not suspend these two unless they complied first with the

requirements of natural justice. That advice was right. This was not a suspension of an administrative character: it was a suspension more in the nature of a punishment. (page 20 of the judgment)

Therefore, Denning L. J. has decided that the suspension in question in that case was a punishment. Hence what was said in reference to suspensions that were not punishments was in obiter.

Geoffrey Lane J., went even further and said,

“The National Executive Committee, acting on legal advice, decided in effect that they would not suspend and there is no evidence of any danger or of any suspicion that that decision may be reversed. Since that is so, there is no need to decide whether there was any power to suspend the plaintiffs nor to decide the applicability or otherwise of the rules of natural justice.” (page 26 of the judgment)

Hence that case can be even categorized under a judgment in which the question of the applicability of the rules of natural justice never arose.

Therefore, whereas Denning L. J., said the suspension in question was a punishment Geoffrey Lane J., said the applicability of rules of natural justice does not arise hence what the respondent's cite as favourable to them was clearly said in obiter.

Furthermore Denning L.J., commencing his speech, in his customary short sentences of precise meaning said, “This is an urgent case. So we must proceed to give judgment at once”. (page 02 of the judgment) Therefore admittedly, to observe with respect, the questions have not been considered in great depth.

Denning L.J., had referred to John vs. Rees (1968) in the aforesaid case. It is pertinent to note what Megarry J., said in that case. One of the questions considered in that case was the applicability of the rule, *audi alteram partem*. **Although it was considered in regard to “expulsion” and “ipso facto cessation of membership”, it applies in equal force to the**

difference between “suspension” and “cancellation” in the present case.

It was said,

“In the present case, there has not in terms been any process of expulsion. Instead, there has been the process which, on Mr. Sparrow's argument, resulted in what for brevity may be described as an ipso facto cessation of membership which, he contended, "got round all problems relating to expulsion." **Considered from the point of view of the members, however, the practical result is indistinguishable from expulsion.** Before, they were members; after, they had been deprived of their membership against their will. The precise legal description of the process by which this occurred, whether by destruction of their own membership, or acts constituting resignation, or repudiation of membership, may well be a matter of indifference to them: they have been unwillingly evicted”.

“I cannot believe that the principles of natural justice can be ousted by the simple process of describing expulsion by another name, or resting it upon an alternative theoretical basis.

Membership of a club or association is doubtless founded upon a basis of contract; but in many cases it is not merely a contract. Membership often gives the member valuable proprietary and social rights, and these, as well as the contract, would be terminated by expulsion. There is thus involved in expulsion not merely the termination of the contract but also the forfeiture of these other rights; and however ready the law may be to recognise the discharge of a contract by repudiation, it is far less ready to accept that there has been a forfeiture of these other rights, whether the process is described as "ipso facto determination" or otherwise”.

Since Megarry J., in John vs. Rees, [Referred to in the case cited in paragraph 87 of the aforesaid Written Submissions of the Respondent] has explained to the hilt, the elusive nature of the concept

of “Natural Justice”, what is relevant from the next twelve passages will be quoted. For the reader who might decry the extensive quoting, this Court would answer, that it is because, the question of “Natural Justice”, forms the basis of this determination.

Megarry J., said,

“However that may be, what matters here is, in my judgment, not the terminology but the substance and the reality: and looking at that, it seems plain that the principles of natural justice prima facie apply. Mr. Sparrow sought to avoid this conclusion by urging that what was done bore generally on P.D.L.P. and was not directed against individuals. He further contended that the principles of natural justice did not apply because the acts were administrative, because there had been no dismissal of any disaffiliates, and because these principles did not apply to unpaid offices”.

“I do not find any of these contentions persuasive.... I look to the realities and not to the labels....”

“...Accordingly, I must consider what are the principles of natural justice which prima facie are applicable, and whether or not there is anything to oust their application. In doing this, it is convenient to refer to a case concerning an avowed expulsion from a political party which came before me some three weeks after the conclusion of the argument in this case, namely, **Fontaine v. Chesterton....”.**

“In that case I said:

“The expression 'the principles of natural justice' is, I think, now a technical term. As Maugham J. pointed out in **Maclean v. Workers' Union [1929] 1 Ch. 602, 624, among most savages there is no such thing as justice in the modern sense. In a state of nature, self-interest prevails over any type of justice known to**

civilisation; the law of the jungle is power, not justice. Nor am I clear what the word 'natural' adds to the word 'justice.' It cannot be intended to indicate the antithesis of 'unnatural justice,' which would indeed be an odd concept; I imagine that it is intended to suggest justice that is simple or elementary, as distinct from justice that is complex, sophisticated and technical.

“The term 'natural justice' has often been used by eminent judges, and although Maugham J. said (at p. 624) that it 'is, of course, used only in a popular sense,' **I would prefer to regard it as having become something of a term of art. To extract the quintessence of the process of justice is, indeed, notoriously difficult. 'The ideas of natural justice,' said Iredell J., 'are regulated by no fixed standard; the ablest and the purest men have differed on the subject': Calder v. Bull (1798) 3 U.S. 386, 399. In Ridge v. Baldwin [1964] A.C. 40, 132, Lord Hodson referred to a 'certain vagueness' in the term, but rejected the view that because the requirements of natural justice depended upon the circumstances of the case, this made natural justice so vague as to be inapplicable. He added: 'No one, I think, disputes that three features of natural justice stand out - (1) the right to be heard by an unbiased tribunal; (2) the right to have notice of charges of misconduct; (3) the right to be heard in answer to those charges.' I do not think that I shall go far wrong if I regard these three features as constituting in all ordinary circumstances an irreducible minimum of the requirements of natural justice. I need only add that all these requirements are essentially procedural in nature; I regard natural justice as a distillate of due process of law.”**

“I then turned to consider a submission based on the judgment of Denning L.J. in **Lee v. Showmen's Guild of Great Britain [1952] 2 Q.B. 329, 342** to the effect **that public policy would invalidate any stipulation excluding the application of the rules of natural**

justice to a domestic tribunal, and said that although I respectfully inclined to the same view, **it seemed to have been expressed obiter and was not mentioned by the other members of the court, so that I would hesitate to decide the case on that ground.** I went on to refer to the rule which was said to justify the expulsion, and then said:

"It is trite law that the rules of an unincorporated association form a contract between all the members of that association. It is, indeed, a somewhat special form of contract; but subject to that, what I am required to do is to construe the terms of a contract. Where the terms in issue deal with the exercise of a power of peremptory suspension or termination of the rights of one of the parties to such a contract, **then I think that the common expectation of mankind would be that the power would be exercised only in accordance with the principles of natural justice unless the contrary is made plain.** This expectation rests upon high and ancient authority. When a member of a university was deprived of his degrees without being given an opportunity to defend himself, Fortescue J. said: 'The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. Adam (says God) where art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldst not eat? And the same question was put to Eve also': Rex v. Cambridge University (1723) 1 Stra. 557, 567. **Even if the law permits the principles of natural justice to be effectually excluded by suitable drafting, I would not readily construe the rules as having achieved this result unless they left me in no doubt that this was the plain and manifest intention. Put a little differently, I would say that**

if there is any doubt, the applicability of the principles of natural justice will be given the benefit of that doubt. The cry 'That isn't fair' is to be found from earliest days, in nursery, street and school alike; and those who wish to confer upon the committee or other governing body of a club or association a power to act unfairly or arbitrarily in derogation of common and universal expectation must make it plain beyond a peradventure that this has been done. This view is, I think, at least consistent with the approach of Romer L.J. in **Lee v. Showmen's Guild of Great Britain [1952] 2 Q.B. 329, 349, C.A.** on a not dissimilar point, where he said that it would require 'the use of clear language' before he was satisfied that the members of any body such as the trade union in question had agreed to leave the construction of the trade union's rules to the committee, to the exclusion of the courts."

"Having now had the opportunity of reconsidering the language that I used in that case, I must say that I can see no reason for resiling from it. **Before resorting to public policy, let the rules of the club or other body be construed: and in the process of construction, the court will be slow to conclude that natural justice has been excluded.** Only if the rules make it plain that natural justice was intended to be disregarded will it be necessary for the courts to resolve the issue of public policy. In this case, accordingly, I approach both clause 8 (2) of the Labour Party constitution and the resolution of the N.E.C. dated April 24, 1968, as provisions requiring to be construed strictly, and as not excluding the processes of natural justice except in so far as this is made plain. Nothing that I can see in clause 8 (2) even begins to exclude the process of natural justice. **The phrase "to take any action it deems necessary" cannot, in my judgment, be read as if it continued "however contrary to natural justice it may be"; nor, in my judgment, are the words "disaffiliation," "expulsion" or even "or otherwise" to be qualified in any such way. These things**

may be done: but they must be done fairly and justly, and not unfairly or unjustly.....”

“...Whatever may be said about the right to an unbiased tribunal, the process of giving notice of the charges and giving those concerned the right to be heard in answer to the charges was plainly not followed.....”

“Mr. Sparrow did contend that sending out the form amounted to affording the members an opportunity of being heard: but not even his considerable powers of advocacy sufficed to give any life to as barren a contention as I have heard.....”

At the apotheosis of this narrative, Megarry J., came to the passage which is so often quoted from his judgment, which is also quoted in the appellant’s written submissions dated 27.07.2022, and said,

“It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. “When something is obvious,” they may say, “why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start.” Those who take this view do not, I think, do themselves justice. 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 inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events”.

Coming back to **Faleel vs. Susil Moonesinghe and others (1992)**, there was another reason for A. Ismail J., to conclude that prior notice of suspension was not necessary. The judgment of the Court of Appeal said at page 314-315,

“A further ground of challenge was that the order of suspension was made without a hearing or any prior notice and that the said order was grossly unreasonable, as there was no situation of emergency which warranted an immediate order of suspension and that no countervailing consideration or circumstances existed which required an order of suspension as a holding operation.

Section 2(3) (a) of Statute No. 4 of 1991 provides as follows:

"(a) Before appointing a retired Judicial Officer under sub section (2) to inquire into any matter the Minister may without hearing or other formality as a holding operation, pending the proposed inquiry and report by such officer preliminarily

(1) suspend the Chief Executive Officer of the Local Authority from office and direct the Deputy Mayor or Vice Chairman of the Local Authority as the case may be ... to exercise the powers and perform the duties of the Chief Executive Officer;"

Hence the relevant section granted the power to suspend, the Chief Executive Officer (Chairman) “**without hearing or other formality as a holding operation**’, prior to the appointment of a retired Judicial Officer to inquire into the allegations.

There is no similar power granted to the Controller of Tea by section 8(2) of the Sri Lanka Tea Control Act.

(B) The allegation of approbation and reprobation:

It is submitted by the respondent at paragraph 28 et. seq., of the aforesaid written submissions, that the petitioner’s directors were summoned on

02.07.2020 (i.e., after the suspension) the allegations were explained and they were asked to show cause.

It is also submitted, that, the directors did not seek further time to show cause and no such cause was shown.

Then, it is said, that directors did not deny that sucrose was found in tea and even conceded **“that it may have been possible that the tea was adulterated without their knowledge”**. They had even said that they suspect that an employee who was dismissed could have been instrumental in doing so.

So, the directors have denied liability. They had given a possible reason too. Whether it be true or not, these are the things that they could have said, if they were given an opportunity of controverting the findings, prior to the suspension.

It is said that they have conceded that a large amount of sucrose could have been brought in without their knowledge. **“Sucrose”, is “a compound which is the chief component of cane or beet sugar¹”. Actually, “sucrose”, is synonymous to “sugar”**. “Sugar” is not contraband. Cannot a person take “sugar” into a Tea Factory?

Then, it is submitted, that the directors have not raised any complaint regarding the testing process or sample process. Why should they complain against testing? The objection regarding the sample process is futile after the suspension.

It is submitted, that, the directors did not deny that it was tea from their factory? This too, after the suspension, is a futile objection. Likewise, the directors seeking clemency, if ever they did so, is not a matter which vitiates the need to hear them before suspension.

Then, it is submitted, with regard to a previous occasion in which the registration of the petitioner was suspended and given a case number by

¹ [sucrose meaning - Search \(bing.com\)](#)

which they were prosecuted. It is not very professional, to decide a current case by facts pertaining to a previous allegation.

Then, it is cited from **Jayaweera vs. The Commissioner of Agrarian Services Ratnapura (1996) 2 SLR 70**, that,

“A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief.”

The argument, the respondent attempts to raise is particularly, “submission to jurisdiction”.

What else, the directors could have done, if they were asked to come to the office of the 01st respondent, after the suspension. In fact, the position of the petitioner is that directors went to “inquire”, as to why, their factory was stopped from producing (see P.03) tea.

Then, the thread of the submission is suddenly converted at paragraph 40 of the aforesaid written submissions to “**approbation**” and “**reprobation**” and three cases, viz., Scrutton L.J. in *Verschures vs. Hull and Netherland Steamship Co. Ltd.*, (1921) 2 K.B. 608; Samarakoon C.J. in *Visuvalingam vs. Liyanage* (1983) 1 SLR 203 and Sharvananda C.J., in *Ranasinghe vs. Premadharma and others* (1985) 1 SLR 63 are cited, as having been affirmed in C.A. Writ 148/2017 of 09.08.2019, C. A. Writ 129/2013 of 22.11.2020 and SC FR 116/2021 dated 23.03.2022. The said two judgments of the Court of Appeal and one judgment of the Supreme Court (written within 09.08.2019 to 23.03.2022) cite the said three cases.

Hence, it will be seen, that there was no “approbation” and “reprobation” by the petitioner. Whether the directors were summoned to the office of the 01st respondent, or, whether the directors went there to “inquire” into what happened, there is no “approbation” and “reprobation”.

Jayaweera's case was one where the Court of Appeal (F.N.D. Jayasuriya J.,) dismissed a writ application on two preliminary grounds without going into the merits of the case. The petitioner, in that case, has said, that he was not summoned by the Assistant Commissioner of the Agrarian Services for a certain inquiry. But there was only his ipse dixit and the assertion in his affidavit. The Court of Appeal said that the petitioner should have filed a certified copy of the inquiry record and shown that notices have not been issued on him. In the course of this, the court said,

“It is not open to the Petitioner to file a convenient and self serving affidavit for the first time before the Court of Appeal and thereby seek to contradict either a quasi judicial act or judicial record”. (page 72)

While, a “self serving affidavit”, could be a term of art, this Court, with great respect, fails to see, if an affidavit of a party does not serve himself, whom should it be serving? Whatever, that may be the case was dismissed on the aforesaid ground and on delay. Although the passage quoted by the respondent in this case, refers to “submission to jurisdiction”, there was no such matter arisen in that court and hence what was said was in obiter.

In the present case too, there was no “submission to jurisdiction” and, in any event, it does not arise because, the 01st respondent was, under the applicable law, under a duty to hear the petitioner before P.02 and P.03 were issued. Furthermore, the 01st respondent, at the very least, had 06 days to do so.

Hence, I hold that there is a duty cast upon the Tea Controller to hear the petitioner before deciding whether to suspend or not as per section 8(2) of the said Act.

In the circumstances, this Court grants the reliefs (f), (g), (h), (i) and (j) of the petition of the petitioner dated 29.07.2020.

APPEAL

B. Sasi Mahendran, J.

I have had the advantage of reading the draft judgment of my brother Justice D.N. Samarakoon and I am in entire agreement with the conclusion he has reached. The importance of the issue in contention i.e., the concept of ‘natural justice’, its applicability or lack thereof, in the present case compels me to express my views on the matter, albeit in brief.

Section 8(2)(a) of the Tea Control Act No. 51 of 1957, as amended, provides that where the Tea Controller (or the “Tea Commissioner”) is **satisfied, after such inquiry as he may deem necessary** that the building, equipment, or manner of operation of any tea factory is not of a standard conducive to the manufacture of made tea of good quality the Controller may suspend or cancel where necessary the registration of such tea factory. The underlying issue is whether the Controller is empowered to suspend the registration of the Petitioner factory without offering a fair hearing in compliance with the fundamental tenets of ‘natural justice’. The Petitioner factory’s registration was suspended with effect from 30th June 2020, following a report (dated 24th June 2020 – marked “R5”) which found that the Petitioner factory’s sample tea obtained from the Petitioner factory’s registered selling broker was adulterated. The fact that registration was suspended was informed to the management of the Petitioner factory informally through its Brokers. The suspension was informed to the Brokers by the document marked “P2” dated 30th June 2020, which was not addressed/ copied to the Petitioner factory. On the 1st of July 2020, officers of the 1st Respondent visited the factory and wrote on the Tea Book that production is discontinued. This was six days after the report was released.

The Respondents argue that the consideration that ought to be given much weight is that of the recognition of ‘Ceylon Tea’ around the world and

the catastrophic consequences that may follow if that world-renowned brand of 'Ceylon Tea' is found to be substandard. The ripple effect of such a loss of faith in the brand across the tea industry and the national economy is damning no doubt. Yet, a consideration that this Court of law cannot simply dismiss because of this greater interest is that of the rules of natural justice: justice that is "simple and elementary", in this context, the right to a fair hearing. This contrasts with the case of Faleel v. Susil Moonesinghe (supra) in which the Deputy Mayor could perform the functions of the Chairman of the Urban Council and thus ensure continuity of administration. In the instant case, the indefinite suspension is tantamount to closure, an end of its operation. This indefinite suspension affects the livelihoods of those most vulnerable and usually left out of the equation, the employees. I am reminded of the words of Geoffrey Lane L.J. in Lewis v. Heffer [1978] 1 WLR 1061 (quoted with approval in Faleel (supra)). His Lordship held:

"In most types of investigation there is in the early stages a point at which action of some sort must be taken and must be taken firmly in order to set the wheels of investigation in motion. Natural justice will seldom if ever at *that* stage demand that the investigator should act judicially in the sense of having to hear both sides. **No one's livelihood or reputation at that stage is in danger. But the further the proceedings go and the nearer they get to the imposition of a penal sanction or to damaging someone's reputation or to inflicting financial loss on someone the more necessary it becomes to act judicially, and the greater the importance of observing the maxim audi alteram partem.**" [emphasis added]

In the written submissions of the Respondents, their contention was that the Act does not require an oral hearing before a suspension. Reliance was placed on the decision of SC Appeal No. 47/2011, decided on 09.03.2015, by his Lordship K. Sripavan C.J. Accordingly, his Lordship held that the Commissioner must adopt a fair procedure although there may not be a hearing of the kind normally required by natural justice. In the

judgment of the Court of Appeal, the Court held that an inquiry had been held prior to the decision. In the instant case, the Controller held an inquiry only after he decided to suspend the registration.

It is startling that despite the emphasis on protecting the brand of 'Ceylon Tea' and the discovery of adulteration, a period of six days passes by before the Brokers are notified of the suspension and seven days pass by before a visit is made to the factory to enter on its Tea Book that production is suspended. One would expect swift action on the part of the Respondents to nip the problem in the bud and prevent further circulation of the adulterated teas to the world market. This delay in acting and informing the Petitioner factory, not merely the Brokers, is baffling. The Respondents state that they issued a letter dated 2nd July 2020 inviting the representatives of the Petitioner factory to be present at an inquiry. However, before that letter (marked "P4(b)") could be issued two Directors of the Petitioner factory met the 4th Respondent to inquire about the reason for the suspension on 2nd July. Till such time or such time as the letter would have reached the Petitioner factory, the Petitioner factory, whose registration was unknowingly to them suspended by that time, would not have been aware of the reason for suspension.

A plain reading of the Section provides that the Controller must be satisfied that the factory's operation is not conducive to manufacturing good quality tea. However, the Controller can only be satisfied **after an inquiry**. An inquiry must first be conducted before the Controller forms an opinion to suspend or cancel. The Controller is at liberty to determine the format of such inquiry, but he is not at liberty to dispense with holding an inquiry since the Act clearly envisages one. The basic tenet of audi alteram partem must be protected in such an inquiry so that the party affected may make representations to the Controller and proffer an explanation of its side of the story. It is then incumbent upon the Controller to act promptly upon receipt of the lab result by, for example, setting a date for such an inquiry, and communicating the same in advance with the allegation so that the affected

party is notified of the allegations that it ought to address. A decision to indefinitely suspend the registration and operation of the factory, without giving reasons to the factory is in derogation of the audi alteram partem rule and offends one's ordinary sense of justice.

In the case of De Verteuil v. Knaggs [1918] A.C. 557, cited to us by the Respondents and referred to in a long line of authorities, the legislation concerned provided, "if at any time it appears to the Governor, on sufficient ground shown to his satisfaction...". Their Lordships of the Privy Council observed:

"The Ordinance does not prescribe any special form of procedure, **but there is an obvious implication that some form of inquiry must be made, such as will enable the Governor fairly to determine whether a sufficient ground has been shown to his satisfaction** for the removal of indentured immigrants. The particular form of inquiry must depend on the conditions under which the discretion is exercised in any particular case, and no general rule applicable to all conditions can be formulated..... **The acting Governor could not properly carry through the duty entrusted to him without making some inquiry whether sufficient grounds had been shown to his satisfaction** that immigrants indentured on the La Gloria estate of the appellant should be removed. **Their Lordships are of opinion that in making such an inquiry there is**, apart from special circumstances, **a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice.**" [emphasis added]

It is noteworthy that the legislation concerned in De Verteuil, in contrast to the Tea Control Act, does not state "after such inquiry" (it provides "**on sufficient ground shown to his satisfaction**"). Yet their Lordships read in the requirement to conduct one. In the case of Cooper v. Wandsworth Board of Works [1863] 143 ER 414, Byles J. famously

remarked that “the justice of the common law will supply the omission of the legislature.” In the instant case, however, this Court does not have to do so since the legislature has made it explicit.

In Board of Education v. Rice [1911] A.C. 179 Lord Loreburn L.C. famously pronounced:

“In such cases the Board of Education will have to ascertain the law and also to ascertain the facts I need not add that in doing either they must act in good faith and listen fairly to both sides, for **that is a duty lying upon everyone who decides anything**. But I do not think that they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses They can obtain information in any way that they think best, always giving a fair opportunity to those who are parties to the controversy of correcting or contradicting any relevant statement prejudicial to their view.” [emphasis added]

Both these statements were referred to with approval in the case of The University of Ceylon v. E.F.W. Fernando 61 NLR 505 by their Lordships of the Privy Council. I would like to reproduce an excerpt of the judgment of Lord Jenkins:

“From the many other citations which might be made, their Lordships would select the following succinct statement from the judgment of this Board in the case of De Verteuil vs. Knaggs:

‘Their Lordships are of opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice.’

The last general statement as to the requirements of natural justice to which their Lordships would refer is that of Mr. Justice Harman (as he then

was) in the case of *Byrne v. Kinematograph Renters Society Ltd.*, of which their Lordships would express their approval. The learned Judge said this:-

‘What then are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not myself think that there really is anything more.’”

Thus, the rules of natural justice are flexible. The content of such an inquiry that is insisted upon cannot be applied equally across the board indiscriminately. Yet, the requirement to conduct an inquiry and hear the other side, including its core criterion of providing notice of the same, cannot be dispensed with in the instant case for the reasons that the legislature has made it explicit and the severity of the consequences that result from the de facto closure of the factory.

Therefore, agreeing with my brother Justice D.N. Samarakoon I hold that the Petitioner factory should have been given notice before the decision to suspend registration was made under Section 8(2) of the Tea Control Act, as amended, and a proper inquiry should have been conducted. Accordingly, the documents marked “P2” and “P3” are ultra vires the powers of the Tea Controller and are set aside.

JUDGE OF THE COURT OF APPEAL