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

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

Case No: CA/WRIT/198/2020

1. G. Savarimuthu Retty and Sons (Pvt) Ltd,
   Uplands Tea Factory,
   Uplands Estate,
   Peradeniya.

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: Hon. D.N. Samarakoon, J.

Counsel: Dr. Romesh de Silva P. C., with Lakshman Perera P.C., Thishya Weragoda and Niran Anketell instructed by Chandrakumar de Silva for the Petitioner.

Milinda Gunathilleke, A. S. G., P. C., for the Respondents.

Argued on: 27.02.2024[1]

Written Submissions: 11.11.2022 by the Petitioner.

17.01.2023 by the Respondents.

Decided on: 10th May 2024

[1] The connected Writ 195 2020 and Writ 196 2020 were argued before me and Justice Mahendran. The former was decided in 26.09.2022 and the latter on 03.05.2024. On 29.01.2024 it was agreed by junior counsel to fix this case (Writ 198 2020) and the other two cases Writ 199 2020 and Writ 200 2020 before me as Single Judge on material available in record. But later on the same day the respondents resiled, with the permission of the Court and agreed to argue before me as Single Judge. Hence argued on the above date from 1.35 p.m. to 2.30 p.m.

D. N. Samarakoon J.,

This matter was heard at first together with three other WRIT applications including WRIT 195/2020, This court decided that matter by judgment dated 26.09.2022

The learned Additional Solicitor General, President's Counsel took up the position that the facts in each case are different. However, in as much as the suspension by the Tea Board in Writ 195 2020 was in respect of Kurugama Tea Factory Pvt. Ltd. in Muruthalawa, Kandy in this case the relevant Tea Factory is G. Savarimuthu Retty and Sons (Pvt) Ltd., Uplands Tea Factory, Uplands Estate, Peradeniya and this also relates to a suspension of the Tea Factory and the position of the Petitioner is that the rule audi alteram partem was violated.

At the commencement of the written submission the Respondent has submitted that it is the standard practice to carry out random inspections of catalogued tea for sale from time to time to ensure that the quality of made tea is maintained in terms of circulars and regulations, that withdrawing lines of catalogued tea is a routine part of the process of maintaining the quality of Ceylon Tea. Submissions have been made, that, large numbers of lines of tea are withdrawn and retained at broker's warehouses pending investigation of quality and the documents marked P8(a), P8(b) and P.8(d) very clearly demonstrate that the retention of Tea lines pending investigation is a standard practice that applies to all Tea Manufacturers in the industry. It is not an isolated or a targeted practice carried out against the petitioner only. (paragraph 11).

The respondents further state, that, the petitioner's tea was collected from the broker's warehouse on 20.08.2020 and they were detected of having 21 mg/g of glucose.

The respondents argue, that, the petitioner is not entitled to relief mainly on four reasons. They are,

(i) The petitioner's unmeritorious conduct

(ii) The decision to suspend was not arbitrary

(iii) The respondents at all times followed due process

(iv) The material facts are in dispute and hence no writ

Interestingly under (ii) above, at paragraph 25 of the written submissions, the respondents submit that the petitioner has no right to manufacture tea and it is a privilege to the petitioner granted by issuing a license and cites Nakkuda Ali vs. Jayaratne, the Privy Council case.

In NAKKUDA ALI, Appellant, and M. F. DE S. JAYARATNE (Controller of Textiles), Respondent, 1950 it was said by Lord Radcliffe, that,

> "It is that characteristic that the Controller lacks in acting under, Regulation 62. In truth when he cancels a licence he is not determining a question: he is taking executive action to withdraw a **privilege** because he believes and has reasonable grounds to believe that the holder is unfit to retain it. But, that apart, no procedure is laid down by the Regulation for securing that the licence holder is to have notice of the Controller's intention to revoke the licence, or that there must be any inquiry, public or private, before the Controller acts. The licence holder has no right to appeal to the Controller or from the Controller. In brief, the power conferred upon the Controller by Regulation 62 stands by itself upon the bare words of the Regulation and, if the mere requirement that the Controller must have reasonable grounds of belief is insufficient to oblige him to act judicially, there is nothing else in the context or conditions of his jurisdiction that suggests that he must regulate his action by analogy to judicial rules".

William Blackstone said in his Commentaries, of the laws of England, Book 1 Chapter 1, pages 120 – 121, "Of the absolute rights of individuals[2]", that,

[2] 'Now, as municipal law is a rule of civil conduct, commanding what is right and prohibiting what is wrong; or as Cicero and after him our Bracton, has expreffed it, functio jufta, jubens honefta et prohibens contraria; it follows, that the primary and principle objects of the law are RIGHTS and WRONGS. In the profecution therefore of thefe

> 'The rights themselves thus defined by those several statutes, consist in a number of private immunities; which will appear, from what has been premised, to be indeed no other, than either the residuum of natural liberty, which is not required by the laws of society to be sacrificed to public convenience; **or else those civil privileges, which society hath engaged to provide, in lieu of the natural liberties so given up by individuals**'.

Blackstone briefly examined prior to making the above observation, the constitutional documents from Magna Carta to the Act of Settlement in 1701 stating that, the vigour of the free English Constitution could always settle the balance of rights and liberties to its proper level after periods of oppression.

So even as far back as in 1765 Blackstone said that it is either the residuum of natural liberty or else those civil privileges which the society has granted, in lieu of the natural liberties so given up by individuals.

He did not specify which it is.

But, the relevance of Blackstone's statement to this discussion with regard to the power of superintendence exercised by courts on administrative action lies not on the question whether he mentions two things or one but his statement clearly indicating that in addition to the portion of natural liberty sacrificed as required by the laws of society and in addition to what is contained in all statutes, ordinary or constitutional, there still exists a residuum of natural liberty with which the laws of society have nothing to do, except indeed to protect them, either by its inclusion in a statute or its recognition by a Court in Judicial Review which require the ruler to protect that liberty vis a vis the claimant before the Court. This residuum of natural liberty always lay beyond the civil privileges recognized by statute, because if it were recognized by statute, then the claimant

commentaries, I fhall follow this very fimple and obvious divifion; and fhall in the firft place confider the rights that are commanded and fecundly the wrongs that are forbidden by the laws of England'. W Blackstone, Commentaries on the Laws of England (Clarendon Press 1765–1770) 119.

needs to invoke the jurisdiction of Judicial Review not for its recognition, but for its protection when it is unjustly 'regulated' by the ruler. It would appear hence that the power of the Court to grant administrative remedies is determined and settled on this residuum of natural liberty which includes civil privileges.

Hence the residuum of natural liberty, that hath not been sacrificed for general good is a wider concept than a civil privilege.

This was addressed by no other person than Alexander Hamilton himself in Federalist Papers[3] No 84 saying,

> 'The most considerable of the remaining objections is that the plan of the convention contains no bill of rights. Among other answers given to this, it has been upon different occasions remarked that the constitutions of several of the States are in a similar predicament. I add that New York is of the number. And yet the opposers of the new system, in this State, who profess an unlimited admiration for its constitution, are among the most intemperate partisans of a bill of rights. **To justify their zeal in this matter, they allege two things: one is that, though the constitution of New York has no bill of rights prefixed to it, yet it contains, in the body of it, various provisions in favor of particular privileges** and rights, which, in substance amount to the same thing; the other is, that the Constitution adopts, in their full extent, the common and statute law of Great Britain, by which many other rights, not expressed in it, are equally secured.'

[3] The Federalist, commonly referred to as the Federalist Papers, is a series of 85 essays written by Alexander Hamilton, John Jay, and James Madison between October 1787 and May 1788. The essays were published anonymously, under the pen name "Publius," in various New York state newspapers of the time.
The Federalist Papers were written and published to urge New Yorkers to ratify the proposed United States Constitution, which was drafted in Philadelphia in the summer of 1787. In lobbying for adoption of the Constitution over the existing Articles of Confederation, the essays explain particular provisions of the Constitution in detail. For this reason, and because Hamilton and Madison were each members of the Constitutional Convention, the Federalist Papers are often used today to help interpret the intentions of those drafting the Constitution.
A Hamilton, et.al., The Federalist Papers (New York: Signet Classics, an imprint of New American Library 2005).
ibid n (52) Hamilton paper no.84.

Indeed a few paragraphs down, Hamilton expressed the same sentiment expressed by Blackstone, but more forcefully, because there was no prince in the United States to whom people (at a conquest) surrendered all the rights.

> 'It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favour of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the barons, sword in hand, from King John. Such were the subsequent confirmations of that charter by succeeding princes. Such was the PETITION OF RIGHT assented to by Charles I., in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of parliament called the Bill of Rights. **It is evident, therefore, that, according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations.** "WE, THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do ORDAIN and ESTABLISH this Constitution for the United States of America." Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.' ' [Emphasis added in this judgment]

Hence Hamilton was against a "Bill of Rights" in the constitution. People have not surrendered anything to a prince who conquered. So no reason to make reservations in favour of privilege. What the people have are rights. The recognition of these rights by a constitution does not make them privileges, civil

or otherwise. The Constitution of 1978 commences on a basis, at least in principle, similar to the American constitution, although the phrase "We the people…." is not there. But the Preamble starts by saying, "The PEOPLE OF SRI LANKA having, by their Mandate freely expressed and granted…." It also says, that, "WE, THE FREELY ELECTED REPRESENTATIVES OF THE PEOPLE OF SRI LANKA, in pursuance of such Mandate, humbly acknowledging our obligations to our People and gratefully remembering their heroic and unremitting struggle to regain and preserve their rights and privileges so that the Dignity and Freedom of the Individual may be assured, Just, Social, Economic and Cultural Order attained…."

Although there is a privileged class, which comes within the scope of social science in any country, law is a refination (*I mean a refinement, but better to have a word that emphasizes the action of refining*) of one of those social sciences, in the scope of which; and under a constitution such as that of 1978 in Sri Lanka, only "privilege" recognized by law is immunity which the constitution describes; and all the other kinds of phenomena that exists enabling people to perform acts, including the manufacture of tea, are rights. **A right is regulated by a licence, that is true. It is done for the public good and welfare, not because the state is the fountain that bestows that "right" like a king granting a privilege**. The "right" belong **to** the people; it is "regulated" **for** the people; and it is done **by** the people; albeit through their representatives, for convenience. That is a democracy. That is an Act that empowers granting, suspending; and cancelling licences. The Constitution at its Article 14(g) recognizes, "the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise;…." The production of tea is one such occupation, profession, trade, business or enterprise. Furthermore, like all agriculture is, it is a method of production of wealth. Hence granting a license either by the state or some public or private authority on its behalf does not mean that it is a grant of a privilege.

It is appropriate to refer to what **Sir William Wade** said about Nakkuda Ali's case in his book Administrative Law (Wade & Forsyth, 12th Edition, 2023, at page 395).

> "The first clear denial of the role of natural justice occurred in a case from Ceylon in which the Privy Council held that a textile trader could be deprived of his trading licence without any kind of [a] hearing. The charge against him was that his firm had falsified paying-in slips when banking coupons under the scheme of control. The Controller in fact arranged an inquiry in which the trader and his witnesses were heard. The Supreme Court of Ceylon, following familiar English authorities, held that the circumstances demanded a fair hearing, but that it had in fat being given. The Privy Council agreed that a fair hearing had been given, but going out of their way to raise the question, they held that it had never been necessary.
>
> The judgment, delivered by Lord Radcliffe, stated that there was no ground for holding that the Controller was a acting judicially or quasi-judicially; that he was not determining a question but withdrawing a privilege; and that nothing in the regulations or in the conditions of his jurisdiction suggested that he need proceed by analogy to judicial rules. It said that the power 'stands by itself on the bare words of the regulation'. It assumed that there was nothing to consider beyond the bare words, and that the right to a hearing could be determined as if the question had never before arisen in an English court.
>
> Not long afterwards (what was then) the Queen's Bench Division held that a London taxi driver's license could be revoked without a hearing by the Metropolitan Police Commissioner. Here again, the licensing authority did not in fact act without granting a hearing: the driver was allowed to appear before the licensing committee, but the committee would not allow him to call a witness to controvert the evidence of the police. He complained that

the hearing given to him had not been full and fair. Lord Goddard C) said that the Commissioner could summarily withdraw a licence without any sort of hearing or inquiry.

These two notorious decisions threatened to undo all the good work of earlier judges. They exposed English law to the reproach that, though a person must be heard before being expelled from their trade union or their club, they need not be heard before being deprived of their livelihood by a licensing authority."

He also said,

"B. THE 'JUDICIAL' FALLACY REPUDIATED

The leading speech of Lord Reid in Ridge v. Baldwin is of the greatest significance because of its extensive review of the authorities, which inevitably exposed the fallacies into which the decisions of the 1950s had lapsed. He attacked the problem at its root by demonstrating how the term 'judicial' had been misinterpreted as requiring some superadded characteristic over and above the characteristic that the power affected some person's rights. The mere fact that the power affects rights or interests is what makes it 'judicial', and so subject to the procedures required by natural justice. 50 In other words, a power which affects rights must be exercised 'judicially', i.e. fairly, and the fact that the power is administrative does not make it any the less 'judicial' for this purpose. Lord Hodson put this point very clearly: [[1964] AC 130]

> the answer in a given case is not provided by the statement that the giver of the decision is acting in an executive or administrative capacity as if that were the antithesis of a judicial capacity. The cases seem to me to show that persons acting in a capacity which is not on the face of it judicial but rather executive or administrative

> have been held by the courts to be subject to the principles of natural justice.
>
> Thus, at last was verbal confusion cleared away and thus the House of Lords restored the classic doctrine of Cooper v. Wandsworth Board of Works, aptly celebrating the centenary of that case, and approving in particular the statements that the right to a hearing was 'of universal application' and that 'the justice of the common law will supply the omission of the legislature'.

Lord Reid emphasised the universality of the right to a fair hearing: whether the cases concerned property or tenure of an office or membership of an institution, they were all governed by one principle. He also said: [[1964] AC at 72]

> We do not have a developed system of administrative law--perhaps because until fairly recently we did not need it... But I see nothing in that to justify our thinking that our old methods are any less applicable today than ever they were to the older types of case. And if there are any dicta in modern authorities which point in that direction then, in my judg- ment, they should not be followed.

This led to the conclusion that Nakkuda Ali v. Jayaratne, holding that a licensing authority did not need to act judicially in cancelling a licence, was based on 'a serious misapprehension of the older authorities and therefore cannot be regarded as authoritative'. In a later case Lord Denning MR pithily summed up the situation: [Regina vs. Gaming Board for Great Britain ex p. Benaim and Khaida [1970] 2 QB 417 at 430]

> At one time it was said that the principles (sc. of natural justice) only apply to judi- cial proceedings and not to administrative proceedings. That heresy was scotched in Ridge v. Baldwin.

At another time it was said that the principles do not apply to the grant or revocation of licences. That too is wrong. R v. Metropolitan Police Commissioner ex p Parker and Nakkuda Ali v. Jayaratne are no longer authority for any such proposition."

(Wade, page 396 last paragraph to page 397 above line 10 from bottom).

In respect of the same subject matter Stanley de Smith's "De Smith's Judicial Review, Seventh Edition, 2015 says,

"**The rise of analytical distinctions and the demise of the audi alteram partem principle**

The distinctions adopted

More significant to the demise of natural justice than the increase in statutory procedures, however, was the distinction drawn in Venicoff's case, as noted above, between "executive" and "non-judicial", and this case heralded an era of increased focus on analytical distinctions in determining the applicability of natural justice. A sharp distinction was drawn between the deprivation of a right and the deprivation of a mere privilege, the latter function importing no duty to act fairly. Distinctions were also drawn between "judicial" and "quasi-judicial" functions, which attracted the duty to act in accordance with the requirements of natural justice, and "administrative" and "legislative" decisions, which did not attract such a duty. The impact of the distinctions is well-illustrated by the decision in the 1951 case of Nakkuda Ali v Jayaratne. The Controller of Textiles in Ceylon had cancelled a textile dealer's licence in pursuance of a power to revoke a licence when he had "reasonable grounds" for believing its holder to be unfit to continue as a dealer. The dealer applied for certiorari to quash the order, contending that the Controller had not held an inquiry conducted in conformity with natural justice. The Judicial Committee of the Privy Council dismissed his appeal, holding that the

Controller, although obliged to act on reasonable grounds, was under no duty to act judicially, so that certiorari could not issue and compliance with natural justice was unnecessary. Two reasons were given for the decision: first, that certiorari would issue only to an authority that was required to follow a procedure analogous to the "judicial" procedure in arriving at its decision; and second, that the Controller was not determining a question affecting the rights of subjects but was merely "taking executive action to withdraw a privilege". Yet the first assertion was contradicted in many cases on the scope of certiorari; and the second served only to demonstrate the limitations of a conceptualistic approach to administrative law. Demolition of a property owner's uninhabitable house might be for him a supportable misfortune; deprivation of a licence to trade might mean a calamitous loss of livelihood; but the judicial flavour detected in the former function was held to be absent from the latter. The decision, whilst not unique, was inconsistent with the previously- adopted attitude of the English courts towards the licensing and regulation of trades and occupations and in general towards the right to earn one's living.

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COMPARATIVE PERSPECTIVES

Historical comparisons

When reviewing the evolution of procedural fairness in comparative historical context, the debt owed in England and Wales, and the Commonwealth more generally, to the large body of American case-law and the sophisticated writings of American commentators on the right to a hearing is worthy of note. While the impact of American experience and thought on English courts was neither immediate nor obvious, its influence on English academics was marked. That said, the audi alteram partem principle did find vibrancy in courts across the Commonwealth

from the 1950s onwards. The High Court of Australia reaffirmed the presumption in favour of the maxim in two cases where summary action derogating from private property rights had been taken in reliance on legislation which afforded no procedural safeguard. The Supreme Court of Ceylon, although bound by Nakuuda Ali v Jayaratne, contrived to give effect to the maxim in a range of situations extending from the disqualification of a university student for misconduct to the removal of local councillors. The vitality of the maxim had survived in Canada as well. The Supreme Court applied the audi alteram partem rule to a decision of a Labour Relations Board to decertify a trade union as the bargaining agent for employees. And in a striking decision the Appellate Division of the South African Supreme Court demonstrated its independence by invalidating a restriction order served by a minister under the Suppression of Communism Act, the person affected not having been given the opportunity of making representations against it in accordance with the "sacred maxim," audi alteram partem. Finally, the New Zealand courts, whilst regarding themselves bound by Nakkuda Ali, were nonetheless prepared to apply the rule to situations far removed from that of a judge deciding a lis inter partes, by finding statutory indications of a duty to act judicially, albeit that the legislation did not expressly require notice or hearing. 203 Beyond the Common- wealth, in Ireland, the principle of natural justice had been promoted by the courts before the 1950s and took on a constitutional dimension in 1965".

(De Smith page 358 to 359 the first paragraph and page 371 and 372 from "Historical Comparisons" to the end of first paragraph at latter page).

Hence, Nakkuda Ali vs. Jayaratne, although cited in this case for the Attorney General of Sri Lanka, does not represent good law.

Despite all claims by respondents, that "due process" was followed, the position with regard to the suspension of petitioner's license to produce tea, as stated in

composite written submissions of the petitioner (filed of record in this case) dated 11.11.2022 says, that,

(i) The respondents collected samples unknown to the petitioner
(ii) The petitioner was told by its broker that by letter dated 02.07.2020 the 4th respondent "Tea Commissioner" had notified the brokers that with effect from that day the petitioner's registration has been suspended
(iii) On 03.07.2020 the officers of the Tea Board visited the petitioner's tea factory and wrote on the Tea Book the writing P. 03
(iv) The petitioner then wrote P.4 and on 08.07.2020 a P.05 on reasons for suspension was sent, which was the first notification
(v) P.05 is some days after 08.07.2000

What the respondents say in their written submissions is that,

(i) They obtained samples from Enderamulla warehouse on 17.06.2020
(ii) The samples were sent for testing
(iii) The test report was obtained on 30.06.2020 (R.5)
(iv) The broker was informed by P.2 dated 02.07.2020 that the registration of the petitioner has been suspended which letter was copied to the petitioner, which letter was issued within 2 days of the results (paragraph 52 of respondents' written submissions)
(v) The entry P.3 was made on 03.07.2020
(vi) P.2 and P.3 are not arbitrary

The above are the facts material for this writ application. As anyone can see, there is no dispute. The respondents have alleged factual disputes to take the case out of the writ jurisdiction. There is no any factual dispute.

As I have explained in my order dated 28.03.2024 in CA/WRIT/174/2024 too, where an objection was raised that the factual basis of the dispute was a contract and hence the writ would not lie, quoting from Thomas Hobbes (pages 14 to 16 in that order), there can be many factual disputes; for unless the parties will not

be in court, but what is material is to consider whether that is the question in issue in the application for writ. As it is said "law arises from facts" (Ex facto jus oritur). The law which has arisen from the facts of this case is whether before suspension of the petitioner on 02.07.2020 the petitioner should have been informed, in a manner that will make it possible for the petitioner to say something on his behalf, or not.

As far as that is concerned, there is no disputed fact in this case, which this court is asked to decide.

The argument of the Petitioner is that it was not given any prior notice of suspension, and not afforded an inquiry as provided for in section 8(2) the Tea Control Act. Respondents accept the above position especially that prior notice was not given by the following position they take at paragraph 92 of the written submissions.

> "92. As stated above, the rules of natural justice do not demand that hearing should be granted prior to suspension. The requirement of *audi alteram partem* can be satisfied when the Petitioner is called for an inquiry to state his version, after the suspension had taken place, to finally decide as to what further steps should be taken in respect of the Petitioner factory. The judicial decisions recognize that hearing granted ex-post facto compensates for absence of prior-hearing."

They cite the cases of Maneka Gandhi vs. Union of India 1978 AIR 597 and Literature Borad of Review vs. H.M.H. Publishing Company Inc. (1964) Qd. R. 261 and also Twist vs. Randwick Municipal Council (1976) 136 CLR 106.

The Respondents have also said that material facts are in dispute which is a standard objection to the exercise of WRIT Jurisdiction. The alleged disputed fact is that whereas the Respondents' position the Tea was adulterated by glucose, exceeding the maximum level permitted for black tea in mid elevation the Petitioner's position is that no adulteration has taken place.

In addition to what was said above on the maxim ex facto jus oritur, in every dispute if a party wants to find, there can be enough factual disputes. But the dispute this court in this WRIT application has to decide is not whether the tea was adulterated or not.

The question for this court is whether it was of importance to notify the petitioner before the suspension took place or not.

The right (or even the privilege for that matter) of the respondents to collect samples, test them, come to findings not disputed by the petitioner. The dispute is whether purportedly acting on those findings, whether the respondents, or any one or more of them, had a duty in law, to ask the petitioner, is there anything for him to say for himself, before his right to produce tea is interfered with by suspending his license.

(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.

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.

The respondents cite, at paragraph 63 of the aforesaid written submissions **SC Appeal No. 47/2011, [Referred to in paragraph 59 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,** 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 61 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 61 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 17.06.2020, the report has come on 30.06.2020, and the Petitioner was suspended with effect from 02.07.2020. **What happened from 30.06.2020 to 02.07.2020 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 30.06.2020 itself, without waiting for 03 days. The petitioner could have been informed on 30th itself or at least on the 01st that its teas are contaminated, thus giving an opportunity for the petitioner to explain, as the first respondent had taken 03 days to suspend the petitioner. In other words, the report being available on 30th, there were at least three days, 31st, 01st and 02nd to ask the petitioner to explain, as the suspension was effected from 02.07.2020.

The respondents in paragraph 86 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., <u>this Court wishes to quote the next five passages from the speech of the Master of Rolls</u>, 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** at paragraph 88 of their written submissions 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 88 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 C. A. Writ 195/2020] 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 roumers 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 re-state 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 Geoffery 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 Written Submissions of the Tea Board in Writ 195/2020] **has explained to the hilt, so to say, 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, **Fountaine 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 per adventure 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 <u>without hearing or other formality as a holding operation</u>, 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) "**<u>without hearing or other formality as a holding operation</u>',** 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.

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.

A further note on “audi alteram partem”:

The Latin maxim audi alteram partem, translating to "listen to the other side" or "let the other side be heard as well," represents a foundational principle of natural justice and due process in legal systems worldwide. Its invocation ensures that all parties involved in a dispute receive an equitable opportunity to present their case before a decision is made. This part of the judgment will explore the historical and literary applications of this principle, in its interpretation and application in the realms of law and society.

At the core of many legal systems is the belief in fair hearing. The maxim audi alteram partem embodies this belief, asserting that no person should be judged without a fair chance to present their side of the story. This principle is intrinsically linked to the notion of justice; it reflects a commitment to impartiality and fairness in adjudicating disputes. Since ancient times, societies have recognized the importance of this principle in various forms, ensuring that decisions are made only after all evidence and arguments have been considered.

Historical records are replete with examples of the audi alteram partem principle. In Ancient Greece, the Athenian democracy was renowned for its public courts, where litigants would have the opportunity to make their case to citizen juries—the dikasteria[4]. The Romans, too, incorporated this concept in their legal system, and it was during this period that the expression audi alteram partem originated.

[4] This system was comprised of three separate institutions: the ekklesia, a sovereign governing body that wrote laws and dictated foreign policy; the boule, a council of representatives from the ten Athenian tribes and the dikasteria, the popular courts in which citizens argued cases before a group of lottery-selected jurors. Although this Athenian democracy would survive for only two centuries, its invention by Cleisthenes, “The Father of Democracy,” was one of ancient Greece’s most enduring contributions to the modern world. The Greek system of direct democracy would pave the way for representative democracies across the globe.
https://www.history.com/topics/ancient-greece/ancient-greece-democracy

Literary works often serve as a reflection of the values and principles of a society. The idea that every voice deserves to be heard is vividly encapsulated in the Bard's play, "The Merchant of Venice". Shakespeare presents a dramatic courtroom scene where Shylock, though vilified, is given the platform to argue for his bond, embodying the audi alteram partem principle. Despite Shylock's ultimate defeat, the process underscores the significance of a fair hearing.

The maxim has been crystallized in the legal annals through its citation in numerous judicial decisions. One landmark case that reaffirmed its importance is Ridge v. Baldwin (1964). In this case, the House of Lords held that a police chief constable wrongfully dismissed without a proper hearing had his audi alteram partem rights infringed.

Another pivotal instance is provided by the European Court of Human Rights in the case of Al-Nashif v. Bulgaria (2002). Although the maxim audi alteram partem did not directly applied, in ECtHR - Al- Nashif v Bulgaria, Application no. 50963/99, 20 September 2002, "The Court found that a minimum requirement of an effective remedy (even where there is an allegation of a threat to national security) is that the competent independent appeals authority must be informed of the reasons grounding the deportation decisions even if those decisions are not publicly available. The authority must be allowed to reject the executive's assertion that there is a threat to national security where it finds it arbitrary or unreasonable[5]."

In the Commonwealth, the principle was further enforced in Osmond v. Public Service Board of New South Wales (1986), (Public Service Board of New South Wales v Osmond [1986] HCA 7; 159 CLR 656; 60 ALJR 209; 63 ALR 559) in which the High Court of Australia held that there is no general duty to provide reasons for administrative decisions[6], but this ruling has been subject to

[5] https://www.asylumlawdatabase.eu/en/content/ecthr-al-nashif-v-bulgaria-applciation-no-5096399-20-september-2002

[6] The High Court of Australia said, "With the greatest respect to the learned judges in the majority in the Court of Appeal, the conclusion which they have reached is opposed to overwhelming authority. There is no general rule of

criticism and has been greatly qualified by the introduction of statutory duties to give reasons in subsequent years[7]. Although Matthew Groves, the writer referred to in fn.4, attempts to imply that reasons are not absolute, there is, as this Court sees, a fundamental link between reasons and the maxim audi alteram partem.

The object of judicial process is arriving at the correct decision. The decision maker should have an objective mind. This is twofold. He or she must be open in mind so as to allow the free inflow of all facts and circumstances the presence of which is necessary to arrive at the right decision. He or she must also have an unfettered ability to discern good from evil. This is the ability to take independent and unbiased decisions. But it goes deeper. Ability to discern good from evil is

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the common law, or principle of natural justice, that requires reasons to be given for administrative decisions, even decisions which have been made in the exercise of a statutory discretion and which may adversely affect the interests, or defeat the legitimate or reasonable expectations, of other persons. That this is so has been recognized in the House of Lords (Sharp v Wakefield [1891] AC 173 at 183; Padfield v Minister of Agriculture, Fisheries and Food [1968] AC 997 at 1032-33, 1049, 1050-54 and 1061-62) and the Privy Council (Minister of National Revenue v Wrights' Canadian Ropes, Ltd [1947] AC 109 at 123); in those cases, the proposition that the common law does not require reasons to be given for administrative decisions seems to have been regarded as so clear as hardly to warrant discussion. More recently, in considered judgments, the Court of Appeal in England has held that neither the common law nor the rules of natural justice require reasons to be given for decisions of that kind: R v Gaming Board; Ex parte Benaim [1970] 2 QB 417 at 430-31; Payne v Lord Harris [1981] 1 WLR 754 at 764 ; 2 All ER 842 at 850-51. It has similarly been held that domestic tribunals are not bound to give reasons for their decisions; see McInnes v Onslow-Fane [1978] 1 WLR 1520 ; 3 All ER 211 and earlier authorities collected in Pure Spring Co Ltd v Minister of National Revenue [1947] 1 DLR 501 at 534-5

The contrary view appears to have been expressed by Lord Denning MR in Breen v Amalgamated Engineering Union [1971] 2 QB 175, but that was a dissenting judgment and if it was intended to suggest that reasons must be given for the decision of a statutory or domestic body whenever the circumstances make it fair to do so it is inconsistent with R v Gaming Board; Ex parte Benaim, in which the judgment of the court was written by Lord Denning MR himself, and with Payne v Lord Harris, a decision to which Lord Denning MR was a party…." https://www.ato.gov.au/law/view/print?DocID=JUD%2F9ALNN85%2F00001

[7] "In Public Service Board of NSW v Osmond (1986) 159 CLR 656, the High Court held that there is no general duty to provide reasons for administrative decisions. The rule in Osmond has been criticised by scholars and greatly qualified by the introduction of statutory duties to give reasons. This 'Before the High Court' examines the rule established in Osmond, the case for and against a general common law duty to provide reasons, and the various statutory duties to provide reasons. It also considers the recent law of several other common law jurisdictions, by which the courts have recognised limited duties to provide reasons for administrative decisions. The pending case of Wingfoot Australia Partners Pty Ltd v Kocak [2013] HCA Trans 105 ('Kocak'), for which special leave was granted on 10 May 2013, provides an occasion for limited but important change to the law". Before the High Court Reviewing Reasons for Administrative Decisions: Wingfoot Australia Partners Pty Ltd v Kocak, Matthew Groves, Law Faculty, Monash University. https://classic.austlii.edu.au/au/journals/SydLawRw/2013/25.pdf

not what anybody and everybody think good and evil, for it could be different from one person to another. This stands on a harder surface than it may appear because it is so connected with the rationality of human mind. It may be called 'first principles' or 'fundamental principles' but whatever it may be called it is that which arises by cause following effect, reason.

Hence the reason or the basis for the existence of the maxim audi alteram partem is to allow the free inflow of all relevant information, on which; and on which only, a correct decision can be made.

In addition to these cases, the principle remains alive in literature, as evidenced in "To Kill a Mockingbird[8]," Harper Lee's seminal work set against the backdrop of racial injustice. The character of Atticus Finch, while defending Tom Robinson, exemplifies the essence of audi alteram partem, pleading for the jury to listen to both sides without prejudice, albeit in an atmosphere of deep-seated bias.

The significance of the maxim audi alteram partem cannot be overstated. Both historically and in modern jurisprudence, this principle safeguards individuals against the miscarriage of justice. It is not merely a procedural requirement but an ethical commandment that validates the essence of human dignity in the adjudicative process. While the examples from both history and literature reveal the challenges in realizing this ideal in practice, they also underline its perpetual relevance.

Across ages and cultures, the audi alteram partem rule has been an enduring beacon of justice, underscoring the belief that fairness cannot be achieved

[8] "To Kill a Mockingbird" is a significant novel by Harper Lee that explores themes of racial injustice and moral growth. In the story, the jury plays a crucial role in the trial of Tom Robinson, a Black man falsely accused of raping a white woman, Mayella Ewell. Despite clear evidence of his innocence and a compelling defense by Atticus Finch, the all-white jury convicts Tom Robinson, reflecting the deep-seated racial prejudices of the time123.

The jury's decision is a pivotal moment in the book, highlighting the societal issues of the American South during the Great Depression and serving as a catalyst for the protagonist Scout's understanding of the complexities of human nature and justice. https://www.britannica.com/topic/To-Kill-a-Mockingbird; https://www.sparknotes.com/lit/mocking/section10/; https://www.sparknotes.com/lit/mocking/summary/

without lending an ear to all those affected by the law's reach. As depicted in literature and realized in courtrooms, this maxim remains a cornerstone of fair play and equity, imperative for a society founded on principles of justice, equality and the Rule of Law.

It is pertinent, at this stage, to consider a part of the proceedings, containing the judgment of Fortescue J., in 1723 or 1724, in the case of Rex vs. The University of Cambridge or The King against The University of Cambridge from the original law report. It is as follows,

> "CASE 94. THE KING against THE UNIVERSITY OF CAMBRIDGE. [Referred to, Bonaker v. Evans, 1850, 16 Q. B. 171 ; Marquis of Abergavenny v. Bishop of Llandaff, 1888, 20 Q. B. D. 472.]
>
> .....

[Then it gives the judgments of the Chief Justice and two other judges, which includes that of Fortescue J.].

> Pratt, Chief Justice. This is a case of great consequence, both as to the property, the honour, and the learning, of this university, and concerns every graduate there, to law. though at present it is the case only of one learned man, and the head of a college. The question is, whether the university can suspend and degrade, and by what rules they may proceed in either or both of these cases ? And to this matter, it is allowed they may suspend or degrade for a reasonable cause; but then the cause must be specially set forth, that the Court may judge whether it is reasonable, and accordingi And upon this ground it is, that a return of a suspension for contumacy generally will not be good, for the particulars of the contumacy ought to be specified. 5 Rep. 57. [162] It is agreeable to law, that a man shall not be deprived of his property without being heard, unless it be by his own default ; but it is hard that it should be in the power of one man to suspend or degrade another without any appeal for if he should err, as all men are subject to error, then the person suspelded or degraded has no remedy. It is allowed, that this university has a jurisdiction in several cases ; and this Court will support them in the exercise of such jurisdiction, if they do not exceed their proper bounds and limits. Now as to the return, there are several causes set forth both for the suspension and degradation, viz. in saying, " that he would not obey the summons ; that it was illegal ; that the Vice-Chancellor stltd egit; and that he was not his judge ;" aiid all this spoken to a beadle who served the process of their court, and in a very indecent manner, in diminution of the authority thereof, and to make it ridiculous, which is consequently a contempt thereof ; and if the like had been done to an officer of this Court, it would have been accounted a great indignity, and the person should be punished ; but then the matter must be brought before the Court in a proper manner: and whether that was done in this case is now to be determined. Now by this return it appears, that depositions for a con tempt were exhibited by the beadle, but it does not shew that those depositions were taken before a proper judge ; and this being the foundation of the degradation, it does not appear to this Court that they had any power to degrade

the doctor. But admitting they had such a power, then the next thing to be considered oil this return is, whether the cause returned is sufficient to justify this degradation : and if it was, then whether [163] They return, that they had power to degrade for a con it was well returned. tempt, and this was given to them by a charter of Queen Elizabeth, and for any other reasonable cause : now the cause returned was neither, for it was not a contempt to the university, but to the Vice-Chancellor's Court; it is like a contempt to a mayor, which can never be said to be a contempt to the whole corporation ; therefore, though they might degrade for a contempt to the university, it cannot be inferred from thence, that they may degrade for a contempt to a private court of that university.

Fortescue, Justice. The words are "a contempt to the court," for which he ought to have been committed if he had been present in court; and if not, he ought to have been bound to his good behaviour. I do not see how a deprivation for this cause is agreeable to reason or justice: many customs of the university have been adjudged void. It is a rule, that all customs shall be certain. Now this custom to deprive _po connacit is uncertain as to the meaning of the word "contmnacy," whether it means contumacy to the congregation, to the vice chancellor to this court, or to the university ; whether to Dr. Gooch as head of the college, or as Judge of the Iiferior Court.

Pratt, Chief Justice (as to this matter). The words are improper and indecent we should punish all persons who should speak so disrespectfully of our process, and might bind them to their good behaviour ; but the authorities seem too strong to allow a power to remove a person from his freehold for such words.

Eyre, Justice, said, that lie was not satisfied that the university can deprive for a contempt to the vice-chancellor; for a contempt to the vice-chancellor is no con tempt to the university ; they cannot deprive for all contumacies, ior have they returned a power to deprive for a contumacy to the vice-chancellor. It must be university. Suppose, in any other corporation a member should offer a contempt to an Inferior Court, can the corporation deprive- him ? No: they can only punish him as other inhabitants. A proper punishment for a contempt is fine and imprisonment, but not loss of freehold ; an officer of this Court ought not to lose his office for con temptuous words to the Court. A tenant to the lord of a manor or district cannot lose his estate for non-attendance at any court.

Fortescue, Justice. Though a degree in the university is only a civil honour, yet interest and property being the consequence of such degree, the Court considers it as such with all its attendances. It is like the case of an alderman, which of itself is no profit, only by consequence. All degrees were originally given by the Crown ; and though the present right of conferring them is prescribed for by the university, yet that prescription must be presumed to be founded upon a right derived by authority from the Crown; so that a person advanced to the degree of a doctor, &c. may be esteemed to be advanced by the King. There were no degrees among the Grecians or Romans, nor among the first Christians ; they began about the twelfth or thirteenth century, and have been since attended with great privileges and profits, universitatis is the proper Latin word for corporation. A learned man of this university told me, that there were no degrees ever granted there until the university was a corporation. The seminaries for education of youth were antiently held in the cathedrals of the churches of the first Christians. Besides, where any person is degraded for a contumacy, it ought to be by that court to whom the contempt was offered; but it is not

pretended by this return, that the vice-chancellor's court had any power to degrade. **Neither does it appear that Dr. Bentley was ever summoned to answer this contempt ; and it is against natural justice to deprive a man of his right before he is heard ; therefore if there was a custom so to do, such custom would be absolutely void ; and it is a thing of daily experience to grant prohibitions to Spiritual Courts, if they deny the defendants a copy of the libel, because such denial is against natural justice.** And now to offer a common instance, viz. suppose an officer of this Court should show any contempt thereof, could he be deprived of his office for such contempt? Certainly he could not. It is true, they who have argued for the university insisted, that the proceedings there are according to the civil law, and this they have done to justify the suspension, without being summoned to answer the contempt; but it does not appear upon the return (upon which this Court is (164] to judge), that they proceed there by the civil law ; and if so, then the Court must intend that they proceed by the common law, which they have not done, for there is no manner of proof that the doctor was surnmoned to appear to answer the contempt; and it can never be said, that a court which proceeds according to the common (a) law, shall suspend or degrade a person without being heard or summoned. It is said likewise, that this was not a proceeding by virtue of a charter alone, but by a charter-confirmed by Act of Parliament. Now admitting that to be true, it must be granted that convictions, even upon Acts of Parliament, are frequently quashed, for not summoning the persons convicted, though not required by the statute, because it is still against natural justice to convict without hearing, **The want of a summons is an objection that can never be got over. Had the custom been returned to deprive without summons, it had been void, as against natural justice. If a justice of peace convict any man without a summons, such conviction is void. I heard a learned civilian say, that God himself would not condemn Adam for his transgression until he had called him to know what he could say in his defence. Gen. iii. 9. Such proceeding is agreeable to justice. Admitting the university has a jurisdiction, yet this Court will inquire what they have done, and how they have used that jurisdiction, as it was done in * Bushel's[9] case, where it was insisted, that the merits of the cause could not be inquired into upon the return of a habeas corpes, but it was over-ruled ; and this Court cannot affirm the proceedings in this case without over-ruling Bushel's case, and several other authorities of the like nature**.

For which reasons the Court was unanimous in granting a peremptory mandamus; and in Easter term, in the tenth year of George the First, the doctor was restored to his degree.

George the First ascended throne on 01st August 1714. His tenth year was 1724. The law report says the judgment is dated 1723.

[9] In my order in C. A. Writ (Habeas Corpus) 04 2012 dated 24.04.2024 there is a reference to Bushell's case, a ase decided circa 1670.

In the present case too, the 01st respondent was, under a duty to hear the petitioner before P.02 and P.03 were issued. Furthermore, the 01st respondent, at the very least, had 03 days to do so.

Hence, I hold that there was 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.

Judge of the Court of Appeal