FALEEL
v.
SUSIL MOONESINGHE AND OTHERS

COURT OF APPEAL.
W. N. D. PERERA, J. AND
A. ISMAIL, J.
C.A. APPLICATION NO. 706/92.
NOVEMBER 12, 13, 16 AND 18, 1992.

Certiorari and Prohibition – Suspension from Chairmanship of Urban Council – Section 2 (3) (a) (1) of the Powers of Supervision of the Administration of Local Authorities Statute No. 4 of 1991 read with s. 19(3) of the Urban Councils Ordinance – Mala fides – *Collateral and improper purpose – Suspension as a holding operation – Application of rules of natural justice.*

Where the petitioner who was the Chairman of the Urban Council of Beruwela was suspended from the Chairmanship pending inquiry by a retired judicial officer after an investigation and he alleged victimization at the instigation of his political rivals who however were not parties to the proceedings and moved for a quashing of the order of suspension.

Held:

(1) The suspension was by the Chief Minister (1st respondent) after an investigation into matters of administration of the Urban Council of which the petitioner was the Chief Executive Officer and on the failure to attend to the said matters of administration and performance of duties despite a reminder. The suspension cannot then be said to be unreasonable or for an improper or collateral purpose of political victimization at the instigation of political rivals or for extraneous reasons.

(2) *Mala fides* in a narrow sense would include those cases where the motive force behind administrative action is personal animosity, spite, vengeance, personal benefit to the authority itself or its friends. The plea of *mala fides* has to be substantiated to the satisfaction of the Court. Merely raising a doubt is not enough. There must be something specific, direct and precise to sustain the plea of *mala fides*. The burden of establishing *mala fides* is very heavy on the person who alleges it and the very seriousness of the allegation of *mala fides* demands proof to a very high degree of credibility. Where there is nothing discernible to indicate that it was instigated by political rivals owing to political or personal hostility the suspension does not become invalid.

The non-allocation of funds where no development of the urban area has been submitted is justified and not relevant for the purpose of deciding on whether the suspension is justified.

Suspension in essence is merely expulsion *pro tanto*. Each is penal and deprives the member concerned of his rights of membership or office. Here the rules of natural justice *prima facie* apply to the process of suspension in the same way as they apply to expulsion. But these principles do not apply to suspension as a holding operation pending inquiries which is merely done by way of good administration.

On receipt of complaints of maladministration the 1st respondent had directed the Commissioner to initiate inquiries and such investigations were held by a senior investigating officer. The petitioner was not justified in alleging that no inquiry was held.

In most types of investigation there is in the early stages a point at which action of some sort must be taken and must be taken firmly in order to set the wheels of investigation in motion. Natural justice will seldom if ever at that stage demand that the investigator should act judicially in the sense of having to hear both sides. 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*. The rules of natural justice do not apply to suspensions which are made, as a holding operation, pending inquiries.

Where suspension was a holding operation pending a proposed inquiry and report and done in the interests of good administration and not as an infliction of punishment; neither prior notice of the suspension nor a hearing prior to suspension was necessary.

The rules of natural justice do not apply to suspensions which are made, as a holding operation pending inquiries.

The Powers of Supervision of the Administration of the Local Authorities Statute No. 4 of 1991 which supersedes section 184 of the Urban Councils Ordinance does not provide for prior notice or prior hearing before suspension. Section 2(3) (a) of the Statute No. 4 of 1991 specifically provides that the Minister may, before appointing a retired judicial officer make an order of suspension without a hearing or other formality. Under the scheme of the provisions of Statute No. 4 of 1991 suspension as a holding operation is not confined or restricted to a situation where there is a crisis or an emergency. The words 'holding operation' in the context of the provisions in section 2(3) of the Statute No. 4 of 1991 contemplate suspension as a temporary or interim measure, in the interests of good administration, pending the inquiry and report of the retired judicial officer.

Cases referred to:

1. *United Kingdom Association of Professional Engineers and Another v. Advisory Conciliation and Arbitration Services* (UKAPE v. ACAS) [1980] 1 All ER 612, 620.
2. *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948) 1 KB 223.
3. *Lewis v. Heffer* [1978] 3 All ER 354.
4. *John v. Rees* [1969] 2 All ER 274, 305.
5. *Burn v. National Amalgamated Labourers Union of Great Britain and Ireland* (1920) 2 Ch. 364.
6. *Furnell v. Whangarei High Schools Board* [1973] 1 All ER 400.
7. *De Saram v. Panditharatne* (1984) 2 Sri LR 106, 119.

APPLICATION for writs of certiorari and prohibition on Chief Minister.

H. L. de Silva P.C. with *S. Mahenthiran* for petitioner.

K. N. Choksy P.C., L.C. Seneviratne P.C. and *Ronald Perera* for 1st respondent. *Manohara de Silva* for 2nd and 3rd respondents.

Cur. adv. vult.

December 16, 1992.

ISMAIL, J.

The 1st respondent in his capacity as the Minister of the Board of Ministers of the Provincial Council, Western Province, by his letter dated 9th September 1992, (P5), suspended the petitioner from the office of Chairman, the Chief Executive Officer of the Urban Council, Beruwela, with immediate effect, under the powers vested in him under section 2(3) (a) (1) of the Powers of Supervision of the Administration of Local Authorities Statute, No. 4 of 1991, of the Western Province Provincial Council, read with section 19(3) of the Urban Councils Ordinance (cap. 255). He further directed the 3rd respondent, the Vice Chairman of the Urban Council to exercise the powers and perform the duties of the Chief Executive Officer of the Council.

The petitioner by his application dated 22nd September 1992, with documents annexed to it marked P1 to P5, sought Writs of Certiorari and Prohibition to quash the said order (P5), and to quash the appointment of the 3rd respondent to exercise and perform the duties of the Chief Executive of the said Council.

The 1st respondent filed an affidavit dated 25th September '92, annexing to it documents marked X1 to X6, for the purpose of objecting to the grant of an interim order staying the operation of the said order of suspension made by him. A counter affidavit with further documents marked P7 to P13 was then filed by the petitioner on 2nd October '92. Yet another affidavit of the petitioner filed in reply dated 13th October '92 had annexed to it documents marked P14 to P19. The subsequent affidavits of the 1st respondent filed were dated 6.10.92 and 22.10.92 with documents annexed to each of them marked X1a and X2a, and X7 to X21 respectively.

The petitioner averred that he has been engaged in politics for a considerable period and that at the General Elections held in 1977 he actively supported the United National Party, and particularly Mr. Bakeer Markar, who was duly elected as the first Member of Parliament for the Beruwela constituency. At the 1979 elections to local bodies he sought nomination from the United National Party to run for the office of Chairman of the Beruwela Urban Council and in this connection he sought the assistance of Mr. Bakeer Markar. However, the United National Party solely at the instance of Mr. Bakeer Markar nominated his cousin and brother-in-law Mr. Razick Marikkar who was subsequently elected as the Chairman of the said Council at the 1979 local government elections.

The petitioner however did not contest the local government elections in 1979. He contested the local government elections held in 1983 leading an independent group which secured victory with the election of four members of its group, while the United National Party and the Sri Lanka Freedom Party had secured two seats each. He was elected as the Chairman of the Urban Council, Beruwela, at this election in 1983.

The petitioner has alleged that since his election to the office of Chairman in 1983. defeating the United National Party group formed and backed by Mr. Bakeer Markar, that Mr. Bakeer Marker who had become ill disposed towards him both politically and personally used his powers to obstruct the functions and the administration of the Urban Council. He alleged that Mr. Bakeer Markar cancelled an

allocation Rs. 350,000/- to the Council for development work from the annual government budget allocated electorate-wise, immediately after he was elected Chairman; and that even subsequently from 1984 to 1986, Mr. Bakeer Marker had not allocated any monies to the Council. A further allegation is that Mr. Baker Markar protested to the Urban Development Authority and endeavoured to prevent the construction of a new office building in 1985 after the office building of the Council was destroyed by fire which he believed to be an act of sabotage.

The petitioner was suspended from the office of the Chairman of the Urban Council on 10th September 1987 by the then Minister of Local Government and Construction in terms of section 184 of the Urban Councils Ordinance. An application No. 974/87 filed by the petitioner challenging the said order of suspension was rejected by the Court of Appeal. He then obtained special leave to appeal and the Supreme Court by its judgment dated 8th February 1988, allowed his application for interim relief staying the order of suspension and directed the Court of Appeal to issue notice on the respondents.

The 1st respondent to the present application was not the Chief Minister at the time relevant to the suspension of the petitioner from the office of Chairman in 1987 and the subsequent proceedings challenging the order of suspension. He averred that he is personally unaware of the allegations made against Mr. Bakeer Markar and that personal and political animosity between them had absolutely no bearing on his decision to issue the present order of suspension on 9th September '92 (P5). Mr. Bakeer Markar was not a respondent to the application to quash the order of suspension in the earlier application referred to above nor is he a party to the present application.

The petitioner claims to have actively campaigned for the Sri Lanka Freedom Party candidate Mrs. Bandaranaike at the Presidential Elections held in 1988, and for the Sri Lanka Freedom Party at the General Elections held in 1989 especially in the Beruwela area. Mr. Imtiyas Bakeer Markar was the candidate of the United National Party at the General Elections in 1989 for the Kalutara district and the party organizer for the Beruwela area.

The petitioner was re-elected as the Chairman of the Beruwala Urban Council at the elections to the Council held in May 1991, after the independent group led by him secured five seats, while the United National Party obtained three seats and the Sri Lanka Freedom Party obtained one seat. He was thereafter appointed as the Sri Lanka Freedom Party organizer for the Beruwela electorate in June 1991 by its President and he now commands the support of six members of the Council as opposed to the three members of the United National Party.

The petitioner has referred to an incident in 1989 soon after the General Elections when his brother-in-law was shot dead by assailants who were said to have been body-guards of Mr. Imtiyas Bakeer Markar and for which offence no person has yet been charged. He has also alleged that a motor car belonging to his son was damaged by the supporters of Mr. Imtiyas Bakeer Markar soon after the results of the election to the Council were released in May '91. The petitioner has further stated that the day after the elections to the Urban Council were held in May 1991 he was arrested and detained overnight at the Beruwala police station. He believes that this arrest was made at the instigation of Mr. Imtiyas Bakeer Markar to victimize and humiliate him. However, Mr. Imtiyas Bakeer Markar against whom these allegations are made is not a respondent to this application and it is the contention of the 1st respondent that these averments which he is not aware of, and which have not been substantiated are irrelevant to these proceedings and had no bearing on his decision to make the order of suspension (P5).

The petitioner has further averred that sometime after he assumed office as Chairman of the Council in May 1991, the Ceylon Electricity Board cut off the electricity supply to the Council area on the ground of arrears of payments. He believes that this was done at the instigation or Mr. Imtiyas Bakeer Markar. He had protested to the Board that these arrears were outstanding from the early 1980's but the Board did not restore the supply. In this connection in an action which is yet pending in the District Court of Colombo and which he caused to be filed in the name of the Council, the Court granted interim relief directing that the supply of electricity be restored. The 1st respondent has pointed out that the arrears of payment due to the

Electricity Board from the Urban Council as at 31st August 1991 was Rs. 4,340,696/46.

Thus the petitioner has made allegations of malice on the part of Mr. Bakeer Markar in the post Urban Council election period of 1983, and on the part of Mr. Imtiyas Bakeer Markar, his supporters and body-guards in the period after the General Elections in 1989 and the Urban Council elections in May 1991. It was the contention of learned President' s Counsel for the petitioner that with this history of political rivalry the 1st respondent has jointly with them sought to advance the interests of the United National Party by maliciously making the impugned order of suspension. However, no allegation of malice has been made directly against the 1st respondent and there is no material to link the order of suspension made by him with the allegations of *mala fides* on the part of Mr. Bakeer Markar and Mr. Imtiyas Bakeer Markar stemming from the alleged political and personal animosity over a period of several years since 1979. *Mala fides* in a narrow sense would include those cases where the motive force behind an administrative action is personal animosity, spite, vengeance, personal benefit to the authority itself or its friends, but the plea of *mala fides* has to be substantiated to the satisfaction of a Court. Merely raising a doubt is not enough. There must be something specific, direct and precise to sustain the plea of *mala fides*. The burden of establishing *mala fides* is very heavy on the person who alleges it and the very seriousness of the allegation of *mala fides* demands proof to a very high degree of credibility. I am of the view that the allegations of malice on the part either of Mr. Bakeer Markar or Mr. Imtiyas Bakeer Markar have not been established and that there is nothing discernible in the order of suspension made by the 1st respondent to indicate that it was instigated by either of them through political or personal hostility towards the petitioner. The order of suspension is therefore not invalid on this ground.

The petitioner has further stated that neither the Central Administration nor the Western Provincial Council has released any funds to the said Council except for a sum of approximately Rs. 150,000/- for work in connection with Mobile Presidential Secretariat since he re-assumed office as Chairman in May 1991. The

1st respondent has replied that allocations of funds in the Western Province local bodies are made by him as Chief Minister and as Minister of Local Government in the Western Province. The procedure adopted prior to the allocation of funds is for the local body to submit a development plan for the year, which is then discussed at a meeting attended by the representatives of the local bodies, Members of the Provincial Councils and Members of Parliament of the District where such local bodies are situated. The allocations of funds are thus determined according to the needs of the local body having regard to its development programme. The Urban Council, Beruwela had not submitted a development plan as required nor had its representatives participated at such discussions and hence it was not possible for allocation of funds to be made to the Beruwela Urban Council. The non-allocation of funds in the circumstances appears to be justified and in any event is not relevant for the present purposes.

The order of suspension is sought to be challenged on the ground that it has been made arbitrarily and capriciously for extraneous reasons and for an ulterior purpose and without any evidence whatsoever to warrant a reasonable belief or suspicion that the petitioner has committed or is guilty of any of the acts set out in section 2(1) (a) to (e) of the Statute No. 4 of 1991 or section 184(1) (a) to (e) of the Urban Councils Ordinance. "The expression arbitrary and capricious is sometimes used as a synonym for unreasonable, and in one case this has been transmuted into frivolous and vexatious and capricious and vexatious. But the meaning of all such expressions is necessarily the same, since the true question must always be whether the statutory power has been exceeded." – Wade – Administrative Law, 5th ed. page 365.

Learned Counsel for the 1st respondent has pointed out that section 184 of the Urban Councils Ordinance has no application in view of the provisions of Article 154(G) (B) of the Constitution and it remains suspended and is inoperative, as Statute No. 4 of 1991 has described it as being inconsistent with the provisions of section 184 of the Urban Councils Ordinance. Thus the provisions, which prevail are those contained in Statute No. 4 of 1991.

Section 2 of the powers of Supervision of the Administration of Local Authorities Statute, No. 4 of 1991, provides as follows:–

"2. (1) If at any time the Minister of the Board of Ministers of the Provincial Council of the Western Province to whom the subject of Local Government has been assigned is satisfied that there is sufficient proof of –

(a) incompetence and mismanagement; or

(b) persistent default in performance of the duties imposed by the relevant law, statute or any other written law; or

(c) persistent refusal or neglect to comply with any provisions of law or statute; or

(d) abuse of the powers conferred by the relevant law, statute or any other written law; or

(e) persistent refusal to hold or attend meetings or to vote or to transact business at any meeting to be held,

on the part of any Local Authority, or any of the members of any local Authority, or on the part of the Chief Executive Officer of any Local Authority, the Minister may as the circumstances of each case may require by Order Published in the Gazette:–

(i) remove the Chief Executive Officer of such Authority; or

(ii) remove all or any of the members of such Authority from office; or

(iii) dissolve such Local Authority;"

If a statute confers power for one purpose, its use for a different purpose will not be regarded as a valid exercise of the power and may be quashed. Thus improper purpose has become an important ground to control the exercise of administrative powers and thus to control administrative action. To determine improper purpose in a

particular case, it is necessary to go into the motives or the real reasons for which the administrative action has been taken. What is relevant is to assess whether the purpose in view is one sanctioned by the statute which confers power on the authority concerned. Similarly a discretionary power must be exercised on relevant and not on irrelevant or extraneous considerations. It means that the power must be exercised taking into account the considerations mentioned in the statute. If the authority concerned pays attention to or takes into account wholly irrelevant or extraneous circumstances, events or matters then the administrative action is *ultra vires* and will be quashed.

The petitioner has not established bad faith directly on the part of the 1st respondent but takes up the position that the order of suspension has been made *mala fide* for a collateral purpose as a step in a scheme to unlawfully oust the petitioner from office in order to victimize the petitioner for being opposed to the United National Party and to advance the interests of the party. The 1st respondent has explained the reason for the non-allocation of funds to this Council. He has caused investigation into several matters on which petitions had been addressed to him. The matters inquired into by the Senior Investigating Officer are matters directly concerning the administration and management of the Council and performance of its duties under the Urban Councils Ordinance, while the petitioner as the Chairman is the Chief Executive Officer of the Council, required to discharge all executive acts and responsibilities. Besides, there is nothing to show that the matters referred to in X1/P8 which are directly concerning the administration and performance of the duties of the Council have been attended to since its communication to the petitioner in December 1991. A reminder appears to have been sent by X7 dated 10.8.82 and no report regarding this has yet been sent. In these circumstances it cannot be said that the 1st respondent has been acting for an improper purpose taking into account irrelevant considerations or that the order of suspension was made for a collateral purpose. He did not unreasonably become satisfied that there was sufficient proof of the matters referred to in section 2(1) (a) to (e) of statute No. 4 of 1991.

The 1st respondent has acted in conformity with the provisions of Statute No. 4 of 1991 which stipulates the powers of supervision of the administration of Local Authorities. In my view it does not appear that he has used the powers vested in him in the Statute for an improper purpose or for extraneous reasons or unreasonably. The petitioner's application therefore fails on this ground.

Besides the Courts will not substitute their judgment for that of the Minister on matters which the statute has provided are for his decision. Lord Scarman held in *UKAPE v. ACAS* [1]:

> "But the Courts will not substitute their judgment for that of the statutory body on matters which the statute has provided are for its decision. The extent to which the courts are able to interfere with the judgment or discretion of such a body was laid down in the classic judgment delivered by Lord Greene MR in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* [2]. In the course of it Lord Greens MR observed:
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> '... a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his considerations matters which are irrelevant ... Similarly, you may have something so absurd that no sensible person could ever dream that it lay within the powers of the authority.'

The language of the judgment is very different from the language of industrial relations: but the principle is clear and applicable. The courts will not tell a statutory body how it is to conduct its business or what decision, report or recommendation it is to make. They will invalidate the exercise of a statutory body's judgment or discretion only if satisfied that no reasonable person charged with the body's responsibilities under the statute could have exercised its power in the way that it did."

The petitioner has taken up the position that prior to the making of the order of suspension, the 1st respondent did not inquire from the

petitioner or cause an inquiry to be made from the petitioner pertaining to any of the allegations relating to the matters set out in section 2(1) (a) to (e) of the statute; and that to his knowledge no ground or reason exists which warrants an order of suspension. The 1st respondent has denied this averment and has stated that it is false and a suppression of the true facts and of the documents within the knowledge of the petitioner. He has set out the sequence of events which led to his making the order of suspension as follows: The Commissioner of Local Government and the 1st respondent had received several petitions from the residents since 1991 when the petitioner assumed the office of Chairman complaining against acts of maladministration and mismanagement on the part of the Urban Council, and its officers including the petitioner. The Commissioner and the Assistant Commissioner of Local Government had initiated more than one investigation into these complaints and reports have been made on these investigations. On 20.12.91 the Assistant Commissioner of Local Government had communicated with the petitioner (X1) as Chairman of the Council setting out the several acts of maladministration and wrongful acts revealed in the course of investigation, and requesting that it be submitted to the Council and calling for a report within one month in regard to the steps taken to rectify the several matters referred to therein. On receipt of further complaints of maladministration the 1st respondent directed the Commissioner of Local Government to initiate further inquiries and he caused such investigations to be made by a Senior Investigating Officer who submitted a report in this regard dated 3.8.1992 (X2).

The petitioner at first took up the position that he did not receive the document marked X1 as he was abroad during the relevant period between 12.12.91 and 27.12.91 but admitted that the document marked P8 had been received in his absence by the secretary of the Council. It is apparent that the document X1 is a typed copy of P8 which is identical in its content. Although the petitioner stated that the secretary was directed to send a suitable reply to it at a meeting of the Council held on 30.12.91 it is the position of the 1st respondent that the petitioner as Chairman and the Chief Executive Officer of the Urban Council to whom the document

X1/P8 was addressed has made no attempt to reply it or have any reply sent out thereto indicating whether remedial measures had been taken. It also appears that the Commissioner of Local Government had by his letter dated 10.8.92 (X7) invited the attention of the Chairman to the letter X1/P8 and had called for a report thereon.

The petitioner was therefore not justified in taking up the position that the 1st respondent did not cause an inquiry to be made pertaining to the allegations relating to the matters set out in section 2(1) (a) to (e) of the Statute No. 4 of 1991, and that no ground or reason existed to his knowledge which warranted an order of suspension. The document X1/P8,the contents of which were within the knowledge of the petitioner: This is a material document based on the investigation made in relation to the administration of the Urban Council of which the petitioner was the Chief Executive Officer. The matters set out therein are the matters now required to be inquired into by the retired judicial officer. The petitioner has suppressed this document and the matters relating thereto in his original petition and affidavit dated 22nd September 1992. He had sought interim relief on the averments contained in the said petition and affidavit. The application of the petitioner seeking a discretionary remedy must fail on this ground for lack of *uberrimae fides*.

The 1st respondent has also stated that there was also no response to the letters sent by his Chief Secretary and himself dated 8.8.91 (X3), 24.9.91 (X4) and October '91 (X5). The letters X3, X4 and X5 relates to the non-acceptance of an application for the supply of electricity to a co-operative society engaged in poultry keeping and the alleged removal of a street lamp opposite premises No. 23, St. Annes road. The petitioner has set out his observations in relation to these letters in the document marked P12. His observations on the documents marked X1/P8 and X2 are set out for the first time in these proceedings in the documents P10 and P11. These observations are belated and the 1st respondent has, acting under the provisions of Statute No. 4 of 1991 already appointed a retired judicial officer (X6)

to hold an inquiry on the part of the petitioner in the administration of the Urban Council, Beruwala. In a further affidavit dated 22nd October '91 the 1st respondent has annexed the letter of appointment dated 10.11.92, marked X20, appointing Mr. B. E. de Silva, a retired judicial officer to hold an inquiry and the document X21 sets out the matters to be inquired into. Having considered this document it appears to me that the matters to be inquired into at the proposed inquiry include the matters referred to in the documents X1 to X5 and specifically to matters into which an investigation was caused to be made by the Commissioner of Local Government and reported on by the Senior Investigating Officer (X1 and X2 with translations marked X1a and X2a).

Learned Counsel for the petitioner referred to the various matters that are required to be inquired into by the retired judicial officer and submitted that the charges are too trivial and are such that subjecting the petitioner to an inquiry in respect of them is itself evidence of *mala fides* on the part of the 1st respondent. Since these matters are already the subject of an inquiry it would now not be appropriate for us to consider whether or not the charges are justified, and or whether they are serious enough to merit an inquiry.

The petitioner contends that the order of suspension (P5) is a stigma on the petitioner and would cause irreparable loss and damage to the petitioner socially and politically. However his assertion that he would not be able to participate at the meetings of the Council is incorrect as an order of suspension from the office of Chairman does not preclude him from participating at the meetings of the Council as a member thereof.

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

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

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

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

The submission on behalf of the petitioner is that there was no situation of emergency, a critical situation, a destablising 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. Hefer* [3] in which he used the term holding operation after quoting Megarry J. in *John v. Pees* [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], Mergarry 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 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."

In *de Saram v. Panditharatne* [7], after a consideration of the authorities including the above it was observed; "These authorities support the proposition that suspension is of two kinds: one pending inquiry and the other as a punishment and that the former would not attract the principle of natural justice *audi alterm partem,* whereas the latter would definitely do so". I have no reason to doubt that in this case the suspension of the petitioner, as a holding operation pending the proposed inquiry and report by the retired judicial officer was done in the interest of good administration and was not inflicted by way of punishment. Hence it was not necessary that either prior

notice of the suspension or a hearing prior to suspension should have been given to the petitioner. The rules of natural justice do not apply to suspensions which are made, as holding operation, pending inquiries. The suspension is therefore not invalid on that account.

Besides, the relevant statute too does not provide for it. The Powers of Supervision of the Administration of the Local Authorities Statute No. 4 of 1991, which supersedes section 184 of the Urban Councils Ordinance has in section 2(3) (a) specifically provided that the Minister may before appointing a retired judicial officer make an order of suspension without hearing or other formality".

Considering the scheme of the provisions in the statute which sets out the powers of supervision of the administration of local authorities, it is my view that suspension as a holding operation is not confined or restricted to a situation when there is a crisis or an emergency as urged by learned counsel for the petitioner.

In *Lewis v. Heffer,* Lord Denning also considered the meaning of the following clause "a) To ensure the establishment of, and to keep in active operation, a Constituency Labour Party in every Constituency." Lord Denning at page 363 held, "It seems to me that the words to keep in active operation include power to appoint a national agent to manage the local constituency party. If I am right in what I have just said ... it follows that the NEC can appoint an agent to run the affairs of a local constituency party; otherwise there would be a vacuum." Lord Denning was in this connection not seeking to give the words 'keep in active operation' any meaning other than that which arose from its context.

The words 'holding operation' in the context of the provisions in section 2(3) of the Statute No. 4 of 1991 contemplate suspension as a temporary or interim measure, in the interest of good administration, pending the inquiry and report of the retired judicial officer. The 1st respondent has directed the Vice Chairman in the meanwhile to exercise the powers and perform the duties of the Chief Executive Officer. This holding operation as provided for in the relevant Statute

is not necessarily to be resorted to only in an extreme situation. The 1st respondent has acted in the legitimate exercise of his powers as provided for in the relevant Statute.

For these reasons this application is dismissed with costs.

W. N. D. PERERA, J. – I agree.

Application dismissed.