CHANDRASIRI V.
UNIVERSITY OF RUHUNA AND OTHERS

SUPREME COURT
BANDARANAYAKE, J.
WEERASURIYA J, AND
JAYASINGHE, J.
SC (FR) APPLICATION NO 326/2003
23RD NOVEMBER 2004 AND 10TH JANUARY
AND 18TH MARCH, 2005
Fundamental Rights - "Warning" issued against the petitioner without proper

inquiry and arbitrarily - Arbitrary exercise of discretion by the University contrary to natural justice-Invalidity of warning - Article 12(1) of the Constitution.

The petitioner was a Senior Professor of Forensic Medicine of the Faculty of Medicine, University of Ruhuna. He was a PGIM Board certified JMO and a "Government Medical Officer" within the meaning of section 2 of the Code of Criminal Procedure Act, No. 15 of 1979 competent to hold post mortem examinations, examine persons in police investigation and act as an inquirer into Sudden Deaths within specified Districts or other parts of the country as directed by Magistrates except the Western Province.

The petitioner and Dr. Ruwanpura who was also a Consultant Judicial Officer noted that paediatricians who were not attached to the Department of Health but attached to the Faculties of Universities were discharging the function of Judicial Medical Officers in child abuse cases. Hence the petitioner and Dr. Ruwanpura informed the Deputy Inspector General, Southern Range that Pediatricians who are not "Government Medical Officers" competent to undertake such work under the Code of Criminal Procedure Act were doing such unauthorized work. That letter was copied to the Attorney - General, Magistrates and the Chairman of the National Child Protection Authority (P4) dated 14.02.2002.

The University of Ruhunu at a Faculty Board meeting referred the said letter P4 to the Sri Lanka Medical Council for action. The council decided that the allegations made against the petitioner for sending that letter did not constitute professional misconduct.

Thereafter, on a decision of the University Council, a Committee was appointed to consider whether disciplinary action may be taken against the petitioner for writing the letter P4. It is to be noted that a preliminary inquiry should be held for that purpose. The Committee held that there was no necessity to hold a disciplinary inquiry against the petitioner but to avoid pain of mind to other members of the Board the petitioner should be warned.

Accordingly by letter dated 21.05.2002(P5) the second respondent (Vice Chancellor) warned the petitioner. The petitioner complained, *inter alia*, of violation of Article 12(1) of the Constitution.

HELD:

1. According to the University Establishments Code warning is not a punishment, but used only after an inquiry upon a charge sheet against the repitition of an act or omission. A copy of the warning letter has to be filed in the personal file of the person concerned.

2. In the circumstances, issue of a warning without a charge sheet and a preliminary inquiry was arbitrary.

3. Even if the Vice chancellor was authorized to issue a warning, the issue of the warning without a charge sheet and a preliminary inquiry was an arbitrary exercise of discretion in violation of Article 12(1) of the Constitution.

4. Discretion of a statutory body is never unfettered. It should be exercised according to law. Here the warning was issued contrary to the principles of natural justice.

5. The Committee could not have recommended the issue of a warning before holding an inquiry as directed by the Vice-Chancellor. The Committee exceeded its powers by recommending the warning and exceeded its jurisdiction.

6. The act of the Committee without jurisdiction and the warning by the Vice Chanceller were void in law, and had no legal effect.

7. For the above reasons, the petitioner's fundamental rights under Article 12(1) were infringed.

Cases referred to :

1. *Ram Krishna Dalmia* v. *S. R. Tendolkar* (1958) Air SC 538
2. *Saman Gupta* vs. *Jammu and Kashmir* (1983) Air SC 1235
3. *Padfield* vs. *Minister of Agriculture* (1968) A. C. 997
4. *Breen v. Amalgamated Engineering Union* (1971)1 All. E. R. 1148

APPLICATION for relief for infringement of fundamental rights

J. C. Weliamuna with *Govinda Jayasinghe* for petitioner.

Wijayadasa Rajapakse, P. C. with *Kapila Liyanagamage* for respondents.

Cur. adv. vult.

06th June 2005
SHIRANI BANDARANAYAKE, J.

The petitioner in this application is a Senior Professor of Forensic Medicine attached to the Faculty of Medicine, University of Ruhuna. According to the petitioner, he is the senior most Professor of Forensic Medicine in service and the senior most PGIM Board Certified (Board of Management of the Post Graduate Institute of Medicine) Consultant in Forensic Medicine in Sri Lanka. The petitioner has obtained several qualifications, has carried out extensive research where he has produced over 45 articles, and has served in several other countries in addition to being a Registered Medical Practitioner in the Sri Lanka Medical Council (p1, p1A-p1H and p2)

The petitioner had commenced his academic career in the University of Peradeniya as a Lecturer in Forensic Medicine in 1971. He had joined the University of Ruhuna on 20.04.1981 as a Professor of Forensic Medicine in the said University (P3).

The petitioner submitted that since 1981, as a Professor of Forensic Medicine of the University of Ruhuna, and a PGIM Board Certified Consultant JMO, he has performed Judicial Medical Services, such as examination of persons produced by the police and the Courts. He had also conducted forensic autopsies on orders of the Inquirors into sudden deaths and Magistrates in relation to sudden deaths within the Police divisions of Galle, Akmeemana, Poddala, Rathgama, Habaraduwa and Hikkaduwa. The petitioner had also conducted several Post Mortem Examinations from other places in the country, except Western Province, where so ordered by the Magistrates.

The petitioner complained that, by letter dated 21.05.2003 (P5), the 2nd respondent had informed him that, on the recommendations of the Committee appointed by the Council of the University, that the petitioner has been warned. Accordingly, he alleged that the decision contained in the document marked P5 has the effect of curtailing the petitioner's right to hold a lawful opinion and/or to express his views on a matter of public importance and therefore the said decision of the Council is violative of Articles 10 and/or 14(1)(a) of the Constitution. He further alleged that the conduct of the members of the Council of the University of Ruhuna and the decision that was contained in P5, is unfair, unreasonable, unlawful and therefore is in violation of the petitioner's fundamental rights guaranteed to him in terms of Article 12(1) of the Constitution.

This Court granted leave to proceed for the alleged infringement of Articles 12(1) and 14(1) (g) of the Constitution.

The petitioner's complaint, is as follows:

> At the time where the infringement the petitioner is now complaining took place, he was serving as the Senior Professor of Forensic Medicine at the Faculty of Medicine, University of Ruhuna. According to the petitioner, as a Professor of Forensic Medicine, he was required, *inter alia*, to discharge statutory duties, in addition to his teaching functions. The petitioner submitted that in terms of the provisions of section 122(1) of the Code of Criminal Procedure Act, No. 15 of 1979, where any officer in charge of a Police Station considered that the examination of any person by a medical practitioner is necessary for the conduct of an investigation, he may, with the consent of such person, cause such person to be examined by a Government Medical Officer. Section 2 of the said Code of Criminal Procedure Act defines the term "Government Medical Officers" to include any officer of the Department of Forensic Medicine of any Faculty of Medicine of any University of Sri Lanka.

The petitioner submitted that he and one Dr. P. R. Ruwanpura, who is also a Consultant Judicial Medical Officer, had noted that Paediatricians, who were not attached to the department of Health, but attached to the Faculties of the Universities, were discharging the functions of Judicial Medical Officers in child abuse cases. According to the petitioner, the said Dr. Ruwanpura and he were of the opinion that the peadiatricians who are not attached to the Department of Health do not fall within the definition of "Government Medical Officer" in terms of the provisions in the Code of Criminal Procedure Act, and therefore they are not entitled to examine children for medico-legal purposes and also to submit reports to the Police or to the Department of Probation and Childcare.

The Petitioner and the said Dr. Ruwanpura, by their letter dated 14.02.2002 drew the attention of the Deputy Inspector General of Police, Southern Range, to the said tendency on the part of the Paediatricians who are not attached to the Department of Health. The Petitioner submitted that the said letter was also copied to the officers who are responsible for the administration of criminal justice which included the Hon. the Attorney General, State Counsel who are appearing in the Magistrate's Courts and the Chairman of the National Child Protection Authority of Sri Lanka (P4).

Thereafter, one Dr.T. S. D. Amarasena, a Senior Lecture in Paediatrics at the Faculty of Medicine of the University of Ruhuna ,at a Faculty Board meeting held on 03.10.2002, where the petitioner was also present, informed the members that he has made a complaint to the Sri Lanka Medical Council against the petitioner for professional misconduct by sending the said letter marked as P4. The petitioner submitted that the said complaint made by Dr. Amerasena was considered by the Sri Lanka Medical Council along with the explanation given by the petitioner and it was decided by the Sri Lanka Medical Council that the allegations made against the petitioner do not amount to professional misconduct (P4A and P4B).

On 30.05.2003, to his surprise, the petitioner has received a letter dated 21.05.2003, signed by the 2nd respondent, which stated that , the petitioner has been warned on the recommendations of the Committee appointed by the Council (P5).

The petitioner sepcifically stated that as it transpires from P5, the Council of the University had appointed a sub-Committee to look into the purported allegations made against the petitioner. The petitioner submitted that no explanation whatsoever was sought from the petitioner either by the Council or by the said sub-Committee.

The petitioner's complaint is based on the decision of the Council of the 1st respondent University contained in the letter marked P5 to warn the petitioner. His contention is that, the said decision was taken contrary to the principles of natural justice and contrary to the disciplinary procedure laid down in the Establishments Code of the University Grants Commission and the Higher Educational Institutions (P8) (hereinafter referred to as the Establishments Code.).

The contention of the respondents is that in terms of paragraph 4:4 of Chapter XXII of the Establishments Code, a 'Warning' is not a punishment, but administered to caution the person concerned against the repetition of an act or an omission, which may lead to disciplinary action. Therefore, the submission of the learned President's Counsel for the respondents is that, in warning a person, the disciplinary authority need not follow the procedure and there is no need to hold a preliminary investigation and/or a formal disciplinary inquiry laid down in the Establishment Code. Notwithstanding the above, learned President's Counsel for the respondents

stated that, the Council of the1st respondent University at its 206th meeting held on 16th December 2002 had decided to appoint a sub-committee comprising the 4th, 13th and 15th respondents to held a preliminary investigation on the conduct of the petitioner in writing the letter P4 and sending such letter to several persons including the DIG, Southern Province. The sub-committee had come to the conclusion that in view of the circumstances relating to the writing of P4, there is no requirement to hold a disciplinary inquiry against the petitioner, but to avoid any pain of mind being caused to the other members of the Faculty by such actions in future, that the petitioner should be warned. Such recommendation of the said Committee was considered and approved by the Council at its 208th Meeting held on 24.02.2003 (1R4).

Learned President's Counsel for the respondents, further submitted that in terms of paragraph 8:1:1 of Chapter XXII of the Extablishments Code, a preliminary investigation is purely a fact finding exercise and therefore there is no requirement to seek for explanation from the petitioner. The contention of the respondents is that, even without a preliminary investigation by a sub-Committee, the petitioner could have been warned by the Council as the Council of the 1st respondent University is empowered to warn an acadamic without holding a preliminary investigation.

Further, learned President's Counsel for the repondents submitted that the petitioner had levelled serious allegations against 5 Senior Lecturers in Paediatrics by P4 and the petitioner had failed to substantiate the said allegations when requested to do so by the Dean and/or Faculty Board of the Faculty of Medicine.

Learned President's Counsel for the respondents therefore contended that, by warning the petitioner for the aforementioned incident which brought disrepute to the 1st respondent University, the respondents have acted fairly, reasonably and according to law.

The question in issue, arose due to a letter written by the petitioner and one Dr. Ruwanpura dated 14.02.2002, to the Deputy Inspector General of Police of Southern Range expressing the view they held that the Paediatricians who are not attached to the Department of Health are not entitled to examine children for medico-legal purposes and to submit reports to the police or to the Department of Probation and Childcare (P4).

On the basis of the aforementioned letter, the Faculty Board of the Faculty of Medicine of the University of Ruhuna made a request to the Council of the University to take disciplinary action against the petitioner for writing the letter dated 14.02.2002 (P4). In fact the 8th repondent, the Dean of the Faculty of Medicine has written to the 2nd respondent on 26.08.2002, in the following terms:

> **"I request you to take urgent steps to institute a formal inquiry against Prof. N. Chandrasiri as recommended by the Faculty Board at its meeting held on 08.08.2002."**

When this matter was placed before the Council of the University of Ruhuna at its 206th meeting held on 16.02.2002 (IR2), it was decided to appoint a Committe to consider whether there is sufficient material to hold a disciplinary inquiry against the petitioner. The said decision was in the following terms :

"206.10.01
මහාචාර්ය නිරිඇල්ලගේ චන්ද්‍රසිරි මහතාගේ ක්‍රියා කලාපය සම්බන්ධයෙන් 2000.08.08 දින පැවති වෛද්‍ය පීඨ මණ්ඩලය විසින් කර ඇති ඉල්ලීම : (206.04.22)

මෙම විශ්වවිද්‍යාලයේ වෛද්‍ය පීඨයේ අධිකරණ වෛද්‍ය විද්‍යා මහාචාර්ය නිරිඇල්ලගේ චන්ද්‍රසිරි මහතා විසින් වෛද්‍ය පීඨයේ ළමාරෝග අධ්‍යානංශයේ ජ්‍යෙෂ්ඨ ආචාර්යවරුන්ට එරෙහිව අසත්‍ය කරුණු ඇතුළත් ලිපි 38 ක් පිටපත් සහිතව දකුණු පළාතේ නියෝජ්‍ය පොලිස්පතිට යවා ඇති බවත්, මේ පිළිබඳව වෛද්‍ය පීඨයේ සාකච්ඡා වූ බවත්, ඒ සම්බන්ධයෙන් මහාචාර්ය චන්ද්‍රසිරි නිරිඇල්ල මහතාට විරුද්ධව විනය පරීක්ෂණයක් පවත්වන ලෙස වෛද්‍ය පීඨ මණ්ඩලය ඉල්ලීමක් කර ඇතැයි වෛද්‍ය පීඨාධිපති ප්‍රකාශ කළේය.

වෛද්‍ය පීඨාධිපති විසින් එවූ ලිපිය දැනට පාලක සභා සාමාජිකයින්ට යවා ඇති බව උපකුලපති ප්‍රකාශ කළේය. මේ සම්බන්ධයෙන් සාකච්ඡා කළ පාලක සභාව මහාචාර්ය චන්ද්‍රසිරි නිරිඇල්ල මහතාට විරුද්ධව විනය පරීක්ෂණයක් පැවැත්වීමට තරම් කරුණු තිබේදැයි සොයා බැලීමට පාලක සභාව විසින් පහත නම් සඳහන් අයගෙන් සමන්විත කමිටුව නම් කරන ලදී.

මෙයට අදාළ ලිපි ලේඛන කමිටුවේ සාමාජිකයින්ට යැවීමට ලේඛකාධිකාරීට උපදෙස් දෙන ලදී.

1. අස්මී තාසිම් මහතා - පාලක සභා සාමාජික(සභාපති)
2. සී. මාලියද්ද මහතා - පාලක සභා සාමාජික
3. මහාචාර්ය ආර්. එන්. පතිරණ මහතා - විද්‍යා පීඨාධිපති"

Thereafter on 24.02.2003, at its 208th meeting, the Council had decided to warn the petitioner. This decision was based on the recommendation of the Committee appointed by the Council on 16.12.2002 . The relevant minute reads as follows :

"208.03.17 (207.03.20) මහාචාර්ය නිරිඇල්ලගේ චන්ද්‍රසිරි මහතාගේ ක්‍රියා කලාපය සම්බන්ධයෙන් 2002.08.08 දින පැවැති වෛද්‍ය පීඨ මණ්ඩලය විසින් කර ඇති ඉල්ලීම : (206.04.22)

මෙම කරුණ සම්බන්ධයෙන් අදහස් දැක් වූ උපකුලපති මහාචාර්ය නිරිඇල්ලගේ චන්ද්‍රසිරි මහතාගේ ක්‍රියා කලාපය සම්බන්ධයෙන් 2002.08.08 දින පැවැති වෛද්‍ය පීඨ මණ්ඩලය විසින් කර ඇති ඉල්ලීම පරීදි පසුගිය පාලක සභාව විසින් පාලක සභා සාමාජික අස්මී තාසිමී, සී. මාලියද්ද සහ විද්‍යා පීඨාධිපති මහාචාර්ය ආර්. එන්. පතිරණ යන මහත්වරුන්ගෙන් සමන්විත කමිටුවක් පත් කරන ලද බවත්, එම කමිටුව විසින් මෙම පරීක්ෂණයට අදාළ ලිපි ලේඛන පරීක්ෂා කොට වාර්තාවක් පිළියෙල කර ඇති බවත්, එම වාර්තාව තමා පාලක සභාවට ඉදිරිපත් කරන බවත් ප්‍රකාශ කළේය. පසුව එම වාර්තාව සභා ගත කරන ලදී.

මෙම වාර්තාව සලකා බැලූ පාලක සභාව මෙම කමිටු වාර්තාවේ නිර්දේශය පරීදි මහාචාර්ය නිරිඇල්ලගේ චන්ද්‍රසිරි මහතාට අවවාද කර ලිපියක් යැවීමටත්, එහි පිටපතක් වෛද්‍ය පීඨාධිපතිට යැවීමටත්, තීරණය කරන ලදී. මෙම කමිටුවේ සේවය කළ මෙම පාලක සභා සාමාජික මහත්වරුන්ට ස්තුතිවන්ත වන බව උපකුලපති ප්‍රකාශ කළේය."

The petitioner was warned by the 1st respondent University based on the aforementioned circumstances and now I would turn to examine whether there was any infringement of the petitioner's fundamental rights, on the aforementioned position taken by the 1st respondent University.

Learned President's Counsel for the respondents drew our attention to paragraph 8:1:1 of Chapter XXII of the University Establishments Code in this respect. Chapter XXII deals with the Disciplinary Procedure of the Universities. Paragraph 8:1:1 of the said Chapter deals with the procedure of a preliminary investigation and states that such an investigation is purely a fact finding process. In terms of the provisions of the said paragraph there is no doubt that the preliminary investigation is meant to be a search for material which may disclose an employee's guilt or provide evidence for any charges that may be framed against the person suspected of the offence.

Be that as it may, it is to be noted that, based on the results of the preliminary investigation a decision would have to be taken as to the procedure thereafter, in relation to the allegation against a person. According to paragraph 8.2, if the preliminary investigation discloses a *prima facie* case against the person who is suspected for an offence, a charge sheet will have to be issued calling upon him to show cause as to why he should not be punished.

The Establishment Code however is silent regarding a situation where at the preliminary investigation it is found that there is no *prima facie* case against the suspected person. In that event, I shall now turn to examine the position, when there is no provision to take action against a person where no *prima facie* case is disclosed.

It is common ground that the Council of the 1st respondent University, at its 206th meeting held on 08.08.2000, decided to appoint a Committee to ascertain whether there is a *prima facie* case to hold a disciplinary inquiry against the petitioner (1R2). Paragraph 8:1 of the Extablishment Code deals with appointments of such Committees, and clearly describes under what circumstances that such a Committee could be appointed. The said paragraph is in the following terms :

> **"8.1 When disciplinary action is contemplated against an employee in connection with any offence warranting one of the major punishments listed in sub-para 4.1.2, or for a minor offence in respect of which summary procedure under para 7 is not applicable to the person concerned, the Chairman of the Commission or the Principal Executive Officer of the Higher Educational Institution/Institute will cause to be made such preliminary investigations as are necessary."**

Paragraph 8:1:1 describes the procedure of a preliminary investigation and reads thus :

> **"A prliminary investigation is purely a fact finding process. It is meant to be search for material that may disclose an employee's guilt or provide evidence for any charges that may be framed against the person suspected of the offience..."**

Paragraph 8, which deals with a formal disciplinary inquiry in sub paragraph 8:2 refers to the specific steps that have to be taken where a *prima facie* case is disclosed. This would include furnishing a charge sheet and calling upon the person in question to show cause as to why he should not be punished. However, it is pertinent to note that, there is no such provision to indicate that, if a *prima facie* case against the suspected person is not disclosed at the preliminary investigation, the Principal Executive Officer of the Higher Educational Institution/Institute has the authority to warn the suepected person.

Warning is referred to in paragraph 4:4 of the Establishments Code and it is to be borne in mind that paragraph 4 of the said Establishments Code deals with punishments. It is to be noted that the Establishements Code states that warning is not a punishment. Paragraph 4:4, therefore reads as follows :

> **"A warning" is not a punishment, but is administered to caution the person concerned aginst the repetition of an act or an omission which may lead to disciplinary action. A warning should be administered by the Disciplinary Authority, and a copy of the letter conveying the warning should be filed of record in the personal file of the person concerned."**

The question which arises at this point is whether it is possible to warn an academic without holding any kind of an investigation. The respondents contended that even without the preliminary investigation conducted by the Sub-Committee the petitioner could have been warned by the Council. In terms of the Establishments Code, the Vice Chancellor is the Disciplinary Authority regarding disciplinary matters connected with the Academic Staff. Therefore in terms of paragraph 4:4, it appears that the Vice Chancellor of a University has the discretion to issue a letter of warning.

Article 12(1) of the Constitution states that "all persons are equal before the law and are entitled to the equal protection of the law," and thereby ensures equality and protection for persons who are similarly placed against discriminatory treatment. When the Vice Chanceller is empowered with a wide discretion regarding a warning to be given to a person against whom allegations are being made, it is necessary that there should be certain safeguards in the exercise of such discretion. It is apparent that paragraph 4:4 of the Establishment Code does not give any guidelines as to the

exercise of the power given to the disciplinary authority. In such circumstances, it is clear that the power given to the disciplinary authority is not only arbitary, but also carries uncontrolled discretion. In *Ram Krishna Dalmia v S. R. Tendolkar*(1) it was clearly stated that the vesting of discretion with officials in the exercise of power under a statute alone will not contravene the equal protection clause. What is objectionable is the conferment of arbitrary and uncontrolled discretion without any guidelines for the exercise of that discretion. By allowing an official to exercise his authority, without adhering to any guidelines, norms or principles, and only according to his wishes , a situation is created for decision to be taken arbitrarily. Absolute or uncontrolled discretion given to an authority would nagate equal protection, as such authority could be exercised arbitrarily infringing the equal rights guaranteed in terms of Article 12(1) of the Constitution. Considering this kind of a situation, in *Saman Gupta v Jammu and Kashmir*[2] the Court was of the view that,

> **"The exercise of all administrative power vested in public authority must be structured within a system of controls, informed by both relevance and reason- relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so. Wherever the exercise of such power affects individual rights, there can be no greater assurance protecting its valid exercise than its governance by these twin tests."**

The rejection of the concept of unfettered discretion was vividly described with reference to the landmark decision in *Padfield v Minister of Agriculture* (3) by Lord Denning, in *Breen* v *Amalgamated Engineering Union* (4) in the following terms :

> **"The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this : the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by *Padfield* v *Minister of Agriculture, Fisheries and food,* which is a landmark in modern administrative law."**

Considering the several steps that were taken by the 1st respondent authority, regarding the complaint made against the petitioner, it is clear that the Council had decided to appoint a Committee to ascertain whether there is material to hold a preliminary investigation against the petitioner. The minutes of the 206th meeting of the University Council of 16.12.2004 is quite clear that the mandate given to the Committee was to ascertain whether there is material to hold a preliminary investigation against the petitioner (1R2). The Committee had after several discussions and on perusal of all the available material had come to the conclusion that there is no material to hold a disciplinary inquiry against the petitioner. Paragraph 7 of the letter dated 10.02.2003 (1R3) thus stated that,

"ඉලක්ක කර ඔප්පු කළ හැකි චෝදනාවක් ගොනු කිරීමට තරම් ප්‍රමාණවත් කරුණු නොමැති නිසා තමන්ගේ අභිමතයට අනුව සමාජයේ යහපතට පුරවැසියෙකුට හෝ විශේෂිත තනතුරක් දරන කෙනෙකුහට හෝ සාධාරණ ක්‍රියාමාර්ගයක් ගත හැකි නිසාත් මහාචාර්යවරයාට විරුද්ධව විශේෂ විනය පරීක්ෂණයක් පැවැත්වීම අනවශ්‍ය බවත්."

Having said that the said Committee had proceeded to recommend that the petitioner should be served with a letter of warning. The question which arises at this juncture is whether the said Committee had the mandate to make such recommendation.

It is quite clear that the mandate given to the said Committee by the Council of the 1st respondent University was" to ascertain whether there is material to hold a preliminary investigation against the petitioner" (1R3). Accordingly, in terms of the mandate given to the Committee, they only had to inform the Council of the 1st respondent University the outcome of the inquiry. This would have included an answer in the affirmative or in the nagative to the questing directed at them.

Thus when the Committee recommended that the petitioner be warned, it had, in my view, acted without any authority or jurisdiction. It is trite law that when a Committee acts beyond the mandate/terms of reference on which it was appointed, it clearly lacks jurisdiction and such decisions have no legal validity or effect as the Committee has acted outside its given power. Referring to acts which have been carried out with excess of power, Wade (Administrative Law, 9th Edition, pp. 36-37) states that,

> **"Any administrative act or order which is ultra vires or outside jurisdiction is void in law, *i. e.* deprived of legal effect.**

If it is not within the powers given by the Act, it has no leg to stand on. The situation is then as if nothing had happened, and the unlawful act or decision may be replaced by a lawful one."

Therefore, the decision of the Committee to warn the petitioner is not a lawful one which has any validity and the action taken by the Council on the basis of the said decision and/or recommendation of the Committee is without any legal effect. The said Committee therefore had clearly acted outside their terms of reference and thereby their actions become arbitrary as well as discriminatory and is violative of the provisions of Article 12(1) of the Constitution.

It is also to be borne in mind that petitioner was never heard by the Committee or by the Council in respect of the allegations made against him. Although the respondents claim that an explanation was called from the petitioner, it is to be noted that such direction came from the faculty Board of the Faculty of Medicine and the Dean of the Faculty of Medicine of the 1st respondent University and not from the disciplinary authority or from the Committee which was appointed to look into the allegations against the petitioner. Also, it is important to take into account that at no stage a charge sheet was issued against the petitioner.

Since that landmark decision in *Ridge v Baldwin* (5) (1964) A. C. (40) it is now a well accepted concept that rules of natural justice and fairness in procedures should be applicable to administrative actions. There are no universally accepted principles or norms as to the type of procedure that would be followed in different kinds of inquires. However, what is necessary is that the inquiry should be carried out according to the basic norms of the rules of natural justice and fairness in procedure. Referring to this question, Tucker L. J. in *Russell* v *Duke of Norfolk* (6)(1949) 1 All E. R. 109) stated that.

"There are..... no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject- matter that is being dealt with, and so forth."

The 1st respondent University , bearing in mind the concepts of good administration and governance, should have acted fairly towards the petitioner, who was one of its Senior Professors. Even if there was no requirement to conduct an adversarial hearing before reaching a decision, the rules of natural justice required the University to act fairly towards the petitioner.

In view of the aforementioned finding it would not be necessary to consider the infringement in terms of Article 14(1)(g) of the Constitution.

On a consideration of the totality of the circumstances in this application and for the aforementioned reasons, I declare that the 1st respondent University had acted arbitrarily and unreasonably and thereby had violated the petitioner's fundamental rights guaranteed in terms of Article 12(1) of the Constitution. The decision of the 1st respondent University contained in the document dated 21.05.2003 (P5) is therefore declared as *null and void.* I make order that the 1st respondent University shall pay the petitioner a sum of Rs.25,000 as compensation and costs. This amount to be paid within 3 months from today.

T. B. WEERASURIYA, J. — I agree.

NIHAL JAYASINGHE, J. — I agree.

Relief granted.