DE SARAM

v.

PANDITHARATNE & OTHERS

COURT OF APPEAL.
H. A. G. DE SILVA, J. AND T. D. G. DE ALWIS, J.
C. A. APPEAL No. 99/84.
MAY 2, 3 AND 4, 1984.

Writ of Certiorari – Writ of Prohibition – Universities Act, No, 16 of 1978 – Suspension of student by Vice Chancellor pending inquiry – Whether Vice Chancellor had power of suspension – Whether suspension was malicious or unfair – Appointment of Committee to hold inquiry, whether valid – Delegation of disciplinary powers.

The petitioner, a final year student of the Engineering Faculty of the University of Peradeniya was suspended from the University by the Vice Chancellor (1st respondent) pending inquiry into allegations of indiscipline and misconduct during the period 11th to 17th July, 1983. The 1st respondent thereafter appointed P H. Victor Silva (3rd respondent) to inquire into the allegations. The petitioner made application for the issue of a Writ of Certiorari quashing the order of suspension and for a writ of prohibition prohibiting the 3rd respondent from holding the investigation and inquiry.

Held –

The duty of maintaining discipline in the University is conferred on the Vice Chancellor by the Universities Act. Where a person is responsible for the maintenance of discipline in a particular institution, suspension pending inquiry would be an inherent or implied right flowing from such responsibility. The question whether the suspension pending inquiry is tainted with malice or unfairness is a different matter. However taking all the circumstances into consideration in the instant case, it cannot be said that the 1st respondent has acted unfairly or maliciously.

Section 131 (1) of the Universities Act which makes provision for "any person" to be prohibited from entering the precincts of the University after giving such person an opportunity of being heard, applies not to students but to outsiders whose presence in the campus would be detrimental to the moral life of the student community. Hence, a student need not be given a hearing before a prohibition is imposed on him from entering the campus. The suspension imposed in the instant case is one pending inquiry and is not by way of punishment. This kind of suspension does not attract the principle of natural justice, audi alteram partem, whereas penal suspension would definitely do so. It cannot therefore be said that the suspension was arbitrarily imposed. It is necessary however that the 1st respondent did not act unfairly. Considering the circumstances of the case it is not possible to say that suspension was unfair.

The mere appointment by the disciplinary authority of a committee to inquire and investigate allegations is not improper. The authority must however, finally apply his own mind to the facts as found by the committee of inquiry and arrive at his own decision. The automatic acceptance of the recommendations of the committee without the exercise by the disciplinary authority of his own discretion would amount to a delegation of his powers. In the instant case, there has been no such delegation and the 1st respondent had the authority to appoint the 3rd respondent to inquire and investigate.

Cases referred to :

(1) *Furnell v. Whangarei High Schools Board [1973]. A.C. 660.*
(2) *Lewis v. Heffer [1978] 3 All E. R. 354.*
(3) *R. P. Kapur v. Union of India (1964), A.I.R. Punjab 787.*
(4) *Manoharan v. President, Peradeniya Campus, (C.A. Application No. 216/78, C.A. Minutes dated 19.12.78).*
(5) *Ram Chander Roy v. the University of Allahabad (1956) A.I.R. Allahabad 46*
(6) *Basti Sugar Mills Co. Ltd. v. State of Uttar Pradesh Air 1954 Allahabad 538.*

Nimal Senanayake P.C. with *L. M. Samarasinghe* for petitioner.
K. N. Choksy P.C. with *D. H. N. Jayamaha* and *Nihal Fernando* for respondents.

Cur. adv. vult.

June 15, 1984.

T. D. G. DE ALWIS, J.

The petitioner is a final year student of the Engineering Faculty of the University of Peradeniya. He had completed Parts I and II of the Final Examination and was due to commence lectures for Part III on 2.1.84. By letter dated 20.12.83 marked "A" the petitioner was informed by the Vice-Chancellor of the University, the 1st respondent, that his studentship was suspended with immediate effect. The reasons set out in this letter of suspension were that he was responsible in organising students and inciting them to indulge in acts of violence and indiscipline and violate the rules and regulations of the University and thus disturbing the peace of the University during the period 11th to 17th July 1983. He was also informed by letter "A" that his suspension was pending inquiry into the above allegations. Thereafter by letter dated 16.1.84 the 1st respondent has informed the petitioner that he had appointed P. H. Victor Silva B.A. (Lond.) Advocate, the 3rd respondent to inquire into the allegations of indiscipline and misconduct which formed the basis of the letter of suspension.

The petitioner has pleaded that the suspension order was illegal in that as submitted on his behalf, the 1st respondent had no power of suspension, that the order of suspension was made mala fide, and that the order of suspension was arbitrary in that the petitioner was not given an opportunity of showing cause against such an order. The petitioner has further pleaded that the appointment of the 3rd respondent was without any lawful authority. He has accordingly prayed for the issue of a writ of certiorari quashing the order of suspension, and a writ of prohibition prohibiting the 3rd respondent from holding the investigation and inquiry referred to in letter "B".

The circumstances that led to the suspension of the petitioner and 62 other students of the University are set out in paragraphs 2 to 15 in the 1st respondent's affidavit, which averments have not been refuted in the counter affidavit of the petitioner. The circumstances referred to by the petitioner are as follows :–

There were student disturbances in the University in the month of December 1982, and the C. V. Udalagama Committee was appointed to investigate and report on those disturbances. The Udalagama Committee recommended certain punishments in respect of several

students. On 6.6.83 the Council of the University discussed the Udalagama Committee Report and resolved : (*a*) that the punishment of expulsion recommended on four students be mitigated to suspension for three years ; (*b*) two students be suspended for six months ; (*c*) several other minor punishments be imposed on a number of students. Accordingly six students were suspended by the 1st respondent. The General Student Body made representations that the punishments be withdrawn. The Council of the University considered this demand and on 7.7.83 decided that the punishments should stand, and that if the students created trouble the Campus should be closed. This decision was conveyed to the students the same evening. The students held several meetings and decided to defy any order to leave the Campus if such order was issued. The protest activities of the students to the Udalagama Committee Report which commenced on 4th July were intensified and several meetings were held and posters were pasted in various places within the University premises.

On 11th July the 1st respondent received information that the students had surrounded the administrative building, and he considered it unsafe to come to the office. He attended to his official duties from his residence and decided to close the University. The 1st respondent notified the students that the University was closed with effect from 11th July 1983 and that they should leave the halls of residence by 6 p.m. that day, and that thereafter the Campus was out of bounds to all students. Some students left, but more than half the students defied the 1st respondent's order. The student population of the University was over four thousand. On the night of 11th July the students cut off access to the main administrative building, the Arts building and the Library. They occupied the administrative building and forced open the Gymnasium from which sports equipment such as hockey sticks, etc., were removed. Processions and demonstrations were held, and some students commenced a fast unto death. The security personnel were interfered with, and the students took control of the Telephone Exchange, and of some University vehicles.

The 1st respondent whilst being confined to his residence held dialogue with some members of the Executive Committee of the Student Body, and the Deans and some of the lecturers between the 12th and 14th July and reached the following compromise :– (1) the students who had been suspended be permitted to sit the examination

to be held shortly ; (2) the students who had been punished be given an appeal to a Review Committee to be established ; (3) the barricades preventing access to the administrative building, the Arts building and the Library be removed forthwith ; (4) the students to abide by the Quit Campus Order to enable the University to be opened as soon as possible. This formula was completely rejected by a section of the students (the activist group). Further attempts were made to reach agreement but they failed.

The 1st respondent then in consultation with the Deans and some members of the staff agreed to grant almost all the demands of the students, except the demand for a total rejection of the Udalagama Committee Report. This was on the morning of the 15th July. Thereafter shortly before noon that day the 1st respondent received information that Prof. H. W. Dias, the Dean of the Faculty of Science, had been taken hostage by a group of students whilst on duty at his office and that he was being dragged along by some students carrying lethal weapons and threatening to kill him if he resisted. About the same time the 1st respondent received information that the telephones in the Deans' Office and the security office, and some University vehicles had been damaged. A large number of members of the academic staff expressed concern for Prof. Dias, and realising that Prof. Dias must be saved at any cost the 1st respondent agreed to grant all the demands of the students. A document was signed by the 1st respondent granting the several demands of the students, including the withdrawal of the punishments, and the withdrawal of the order closing the University and declaring it out of bounds to the students. The students rejected this document on the ground that there were no witnesses to it. Thereafter two more documents were prepared which the students did not accept. More demands were made. Finally the last document containing the granting of seven demands put forward by the students was accepted by them at 3.10 p.m. that day, and Prof. Dias was released that day, at about 5.30 p.m. After Prof. Dias' release the 1st respondent maintained that these demands were granted under duress and that they were not enforceable or valid. Thereafter on the 16th July the police arrived, and in the words of the 1st respondent the students were 'flushed out of the Campus. The exams were conducted during the period September to December 1983 under special arrangements as to security and conduct of the examination. The University was to be re-opened only on the 2nd January, 1984. Prior to that date 63

students whom the 1st respondent considered responsible for the incidents between the 11th and 17th July were suspended. The petitioner was one of them.

It was submitted on behalf of the petitioner that the Vice-Chancellor has no power of suspension under the provisions of the Universities Act No. 16 of 1978. The function of the Vice-Chancellor regarding discipline is contained in section 34(6) of the Act which is as follows :– "The Vice-Chancellor shall be responsible for the maintenance of discipline within a University". It was urged by learned counsel for the petitioner that section 34(6) of the Act should be read with section 29 (*n*) of the Act. Section 29 (*n*) is as follows :– "Subject to the powers, duties and functions of the Commission, a University shall have power to regulate and provide for the residence, discipline, and well-being of students, and teachers and other employees of the University". The duties and functions conferred on a University are performed and discharged by the University Council – vide section 45(1) of the Act. It is common ground that no regulations have been made under section 29(*n*) of the Act. It was submitted that the purpose of making regulations under section 29 (*n*) was to specify what sort of behaviour by the students would be considered objectionable, and also to regulate the punishments that could be imposed by the Vice-Chancellor for such lapses. But, section 29(*n*) of the Act does not make it mandatory for the Council to make regulations, whereas section 34(6) positively casts the duty of maintaining discipline in the University on the Vice-Chancellor. Hence the failure or ommission of the Council to make regulations under section 29(*n*) of the Act cannot in my view relieve the Vice-Chancellor of his responsibility to maintain discipline in the University.

The question then arises whether the Vice-Chancellor has the power to suspend a student pending inquiry. The Act enacts that the Vice-Chancellor shall be responsible for the maintenance of discipline within a University. There is no limitation placed on the manner in which he is to maintain discipline, or how that power is to be exercised. Suspension pending inquiry is not necessarily punishment. In some instances suspension pending inquiry may be necessary, and in some instances it may not be necessary. The necessity of suspension pending inquiry will depend on the facts of the particular case. Thus it would appear that where a person is responsible for the maintenance of discipline in a particular institution suspension pending

inquiry would be an inherent or implied right flowing from such responsibility. The question whether the suspension pending inquiry is tainted with malice or unfairness is a different matter, and what now concerns the petitioner in this case is not the power of the Vice-Chancellor to suspend pending inquiry, but whether his suspension pending inquiry is malicious or unfair.

It was urged that in the case of a student as in this case suspension even if it is pending inquiry is penal, and hence is bad in that he was not heard before being suspended. It may be said that the case of a student differs from that of a paid employee regarding suspension or interdiction pending inquiry. Generally a paid employee is paid at least a part of his wages during interdiction pending inquiry and if he is exonerated he would be paid his entire balance wages. But in the case of a University student suspension pending inquiry will result in more hardship than in the case of a paid employee. Missing lectures for a few months can result in his failing the exam or in his failure to obtain a class in his degree. Nevertheless even in the case of a student the larger interests of the institution will have to be considered and the best person to know whether suspension pending inquiry is necessary would be the Vice-Chancellor who however should act bona fide and in the best interests of the institution. Hence the question that has to be considered is whether the suspension was actuated by malice, or whether in the circumstances of this case the suspension was unfair. The petitioner has pleaded malice. But he has not pleaded any facts showing personal malice on the part of the 1st respondent towards him. The malice he seems to allege is hatred or dislike to all the 63 students whom the 1st respondent considered ring leaders in the July disturbances. He alleges that the 1st respondent suspended him purely for the purpose of punishing him by making him miss lectures. It must however be borne in mind that the 1st respondent had evidence before him against the petitioner which he considered sufficient prima facie evidence as to the petitioner's participation in the July disturbances. The 1st respondent has stated in his affidavit that he had security reports that the petitioner was one of the persons who ordered three security guards out of the administrative building after the Campus was declared out of bounds to the students, and that on that occasion the petitioner was carrying an iron rod in his hand. Then there is the affidavit of Prof. J. A. Goonawardena, Professor of Electrical Engineering of the petitioner's own Faculty, namely the

Faculty of Engineering, that during the period that the Campus was declared out of bounds to the students he saw the petitioner within the Campus and he was collecting funds for the student's cause, and asked for a contribution from Prof. Goonawardena himself and wanted to explain the student's point of view to him, all within the Campus.

It was submitted that on the 1st respondent's own affidavit he had this information against the petitioner in July itself, but he stayed till December 1983, a few days before the opening of the University to suspend him. The allegation of mala fides is solely based on this delay in the initiation of the disciplinary inquiry. The reasons for the delay are set out in paragraph 16 of the 1st respondent's affidavit. These averments are not refuted by the petitioner in his counter affidavit. The 1st respondent states that immediately after the students left the Campus the C.I.D. came to the Campus to commence their inquiries into the incidents of July. They were recording the statements of various personnel oi the University staff when on the 24th July the communal disturbances broke out and a state of emergency was declared. As a result the police and C.I.D. were withdrawn and they returned only several weeks later to continue their investigation. The annual examinations had to be scheduled and held on a phased out basis, presumably because the University authorities did not consider it prudent to have the entire University in session at that juncture. The examinations were accordingly held in the months of August, September, October and November 1983. The 1st respondent states that he did not consider it prudent to take disciplinary action against the students who were involved in the disturbances till the conclusion of the examinations as it was necessary to provide the students an environment conducive to sit the examination. In fact the petitioner himself sat his Final Part II examination on that occasion. The 1st respondent has therefore explained his delay in taking action against the petitioner. Then one should take into consideration the circumstances and the atmosphere in which the Campus was closed on the 17th July. Prof. Dias was held as a hostage. The students were demanding the complete rejection of the Udalagama Committee Report, amongst other demands. The 1st respondent who up to then had resisted this main demand had to give in to the students as he and the other members of the academic staff feared for the life of Prof. Dias. The 1st respondent in fact tricked the students into releasing Prof. Dias by giving them the final document agreeing to their

demands in toto. Immediately Prof. Dias was released the 1st respondent maintained that he gave in to the demands of the students under duress and that what he agreed to were neither enforceable nor valid. So that when the University was scheduled to re-open on 2nd January 1984, it was to re-open with the main issue between the students and the University, namely the demand for the complete rejection of the Udalagama Committee Report still unsettled, and with the students smarting under the manner in which their course of action was foiled on the 16th July 1983. The 1st respondent states that he had to suspend these 63 students pending inquiry in the interests of the institution consisting of over four thousand three hundred students. Taking into consideration the situation that confronted the 1st respondent I cannot say that the 1st respondent has acted unfairly or maliciously.

It was also submitted that the letter of suspension "A" was bad in that it prohibited the petitioner from re-entering the Campus without the 1st respondent's authority. It was contended that a student could be prevented from entering the Campus only in the manner set out in section 131 (1) of the Universities Act No 16 of 1978. This section is as follows :–

> "Where the presence of any person in the precincts of a Higher Educational Institution is, in the opinion of the governing authority of that Institution, undesirable, the principal executive officer of that Institution, after giving such person an opportunity of being heard, may with the consent of that governing authority, by writing under his hand served on such person prohibit such person from entering or remaining within such precincts or within such part thereof as may be specified in such writing. Such prohibition shall be and remain in force until revoked by such principal executive officer with the consent of such governing authority".

Learned Counsel submitted that the words "any person" in section 131 (1) must include a student also. Hence under this section the petitioner cannot be prevented from entering the University premises without giving him an opportunity of being heard. Section 131 (2) makes a certificate issued by the principal executive officer in accordance with the provisions of subsection (1) receivable and acceptable by Courts as evidence of the facts stated in the certificate until the contrary is proved. Section 132 prescribes a penalty of a fine for disobeying the prohibition mentioned in section 131 (1). I have

grave doubts that these penal provisions were meant for the students. These provisions would apply only to outsiders whose presence in the Campus would be detrimental to the moral life of the student community. This is quite clear when one examines the relevant section of the first Ceylon University Ordinance of 1942 (Chap. 186), namely section 60 (1). It reads : "It shall be lawful for the Vice-Chancellor with the consent of the Council, by writing under his hand served on any person who has been convicted of an offence under the provisions of section 365 or section 365A of the Penal Code or of section 2 of the Brothels Ordinance to prohibit such person from entering or remaining within the University radius or within such part thereof as may be specified in the writing. Such prohibition shall be and remain in force until revoked by the Vice-Chancellor with the like consent". It would be seen that this section in the Ceylon University Ordinance of 1942 prohibited only persons who had been convicted of having committed unnatural offences or of having run a brothel from remaining within the University radius. The present section has only enlarged the scope of the former section and has included several other categories of persons like for example prostitutes and dope pedlars and the like whose presence would be detrimental to the moral life of the University students. Hence it is clear that this section does not apply to students.

It was contended that the suspension even pending inquiry was bad as the petitioner was not given a hearing before the order of suspension was made. A similar situation arose in the case of *Furnell v Whangarei High Schools Board* (1). There a school teacher was suspended pending charges against him. He was not given an opportunity to state his case before the decision to suspend was made. The question that came up for decision was whether the procedure was unfair and against the principles of natural justice. The majority of the judges of the Privy Council held that one of the principles of natural justice was that a man should not be condemned unheard, but in this case the sub-committee that recommended suspension neither condemned nor criticised, and further that the Board in suspending the appellant pending inquiry did not act irresponsibly or unfairly. Lord Morris in delivering the majority judgment said :

"Suspension is discretionary. Decisions as to whether to suspend will often be difficult. Members of a body who are appointed or elected to act as the governing body of a school must in the

exercise of their responsibilities have regard not only to the interests of teachers but to the interests of pupils, and of parents and the public. There may be occasions when having regard to the nature of the charge it will be wise, in the interests of all concerned, that pending decision whether the charge is substantiated a teacher should be suspended from duty. . . . . .It is not to be assumed that a Board, constituted as it is, will wantonly exercise its discretion".

In the case of *Lewis v Heffer* (2), the facts were : In the Parliamentary constituency of Newham North-East which was a safe Labour seat, there were two factions, the L faction and the B faction. The annual general meeting of the constituency party was to be held in February 1977, to elect office bearers for the year 1977-78. It appeared as if the B faction would be in the majority. After obtaining an injunction as regards the delegates who might vote at the meeting the L faction gained control at the meeting held to elect the constituency committee and office bearers, but following a split in the ranks of the L faction the local general meeting became equally divided between the two factions. After a further period in which attempts made to hold meetings to the local general committee had been frustrated by injunctions, boycotts, and serious disturbances the National Executive Committee of the Labour Party (the N.E.C.) decided that the state of affairs in the constituency were so serious that there would have to be an inquiry into its affairs. Accordingly on 26th October 1977 the N.E.C. resolved to suspend the general committee, the executive committee, and the officers of the constituency party pending the results of the enquiry and to authorise the party's agent to conduct the day-to-day affairs of the constituency party and to take the necessary steps to convene the next general committee meeting. The suspensions were effected without the persons concerned being given an opportunity of being heard. The N.E.C. inquiry was held on 20th November. The L faction learned of the enquiry's report and recommendations, and fearing that the recommendations would, if implemented, imperil the position held by them in the constituency party, brought an action against the N.E.C. claiming inter alia that the suspensions were invalid because the rules of natural justice require the N.E.C. to give the persons concerned notice and an opportunity of being heard before they suspended the operative organs of the constituency party. The N.E.C. contended that by virtue of clause VIII (2) of the National Party's rules they were

empowered to take the action they took and the rules of natural justice did not apply in the circumstances. It was held that there had been no breach of the rules of natural justice. It was only where a suspension was to be effected by way of punishment that natural justice demanded that the persons concerned should be given an opportunity of being heard before the suspension was imposed. Where a suspension was made as a holding operation pending inquiries the rules of natural justice did not apply, because the suspension was done merely as a matter of good administration in a situation where prompt action was necessary. In the autumn of 1977 the situation in the constituency was such that prompt action was necessary and the N.E.C.'s action in suspending the officers and the committees was merely administrative. It would have been impracticable for them at that stage to have given the persons concerned an opportunity of being heard, and they were not required to do so. The majority judgment in *Furnell's* case was followed here. In the course of their judgments Lord Denning M.R. said at page 364 : "But then comes the point : are the N.E.C. to observe the rules of natural justice ? Megarry J. held in [1969] 2 A.E.R. 274 at 305, that they were. He said :

> . . . . . .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'

These words apply no doubt to suspensions that 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 business house ; and a man may be suspended on full pay pending inquiries. Suspicion may rest on him, and so he is suspended till he is cleared of it. No one, as far as I know, has ever questioned such a suspension on the ground that it could not be done unless he was 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 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"

Geoffrey Lane L.J. said at page 368 ; "So far as the rules of natural justice are concerned, it is suggested that before the N.E.C. 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 N.E.C. at that stage to hear both sides. In most types of investigations 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 livelihod or reputation is at that time 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 to 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 could judge on the facts before us, natural justice does not demand that any one should be invited to provide an explanation or excuse before that suspension was imposed"

In the Indian case of *R. P. Kapur v. Union of India* (3) Article 314 of the Indian Constitution came up for consideration. Article 314 is as follows :–"Except as otherwise expressly provided by this Consitution every person who having been appointed by the Secretary of State or the Secretary of State in Council to a Civil Service of the Crown in India continues on and after the commencement of the Constitution to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit". On 18th July 1959 the appellant who was in the Indian Civil Service in Madras at the time of the transfer of power was interdicted by the Governor of Punjab where he was then serving on the ground that a criminal case was pending

against him. The appellant filed writ in the High Court of Punjab challenging this order of suspension. His contention was that he was entitled to the guarantee contained in Article 314 of the Constitution. He relied on R 49 of the Appeal Rules which provided for suspension as a penalty. He contended that the Appeal Rules which governed him and which must be held to have continued to govern him in view of the guarantee contained in Article 314, provided for suspension as a penalty only and that there was no provision anywhere in any rule or statute immediately before the date on which the Constitution came into force providing for suspension otherwise than as a penalty. However it was held by the majority judgment in that case that the words "disciplinary matters" in Article 314 of the Constitution must be given their widest meaning consistent with what disciplinary matters would reasonably include. That suspension was of two kinds ; namely as punishment or as an interim measure pending a departmental inquiry or pending a criminal proceeding ; that both these kinds of suspension must be comprised within the words "disciplinary matters" as used in Article 314.

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 alteram partem, whereas the latter would definitely do so. It is my view that the suspension of the petitioner in this case was only pending inquiry and not penal. Hence the contention that the 1st respondent acted arbitrarily because he did not give the petitioner a hearing before he was suspended must fail.

However it is necessary that the 1st respondent did not act unfairly. I have already adverted to the circumstances in which the 1st respondent was placed when he issued the impugned suspension order. In addition it must be mentioned that shortly after the suspension the 1st respondent appointed the 3rd respondent to inquire and investigate into the matters which formed the basis of the order of suspension. By the time the 1st respondent filed his affidavit, namely the 22nd February 1984, that is within less than six weeks of his appointment, the 3rd respondent had submitted his reports on the cases of 34 students he had inquired into. By this time the petitioner himself was summoned before the 3rd respondent, but his case could not be inquired into, because as averred in paragraph 19 of the 1st respondent's affidavit, which averment is not refuted in the

petitioner's counter affidavit, the petitioner declined to make any statement or present his case before the 3rd respondent on the ground that these proceedings are pending in this court. In all the circumstances of this case therefore it is not possible to say that the 1st respondent acted unfarily in this matter.

The next point relied on by the petitioner is that the appointment of the 3rd respondent was without lawful authority. It was submitted that if the disciplinary power in the University was with the 1st respondent he had no authority to delegate that power to the 3rd respondent. However in this case there is no material to show that any disciplinary power has been delegated to the 3rd respondent. He has been appointed only to inquire and investigate into the matters that formed the basis of the suspension orders. In fact the 3rd respondent's function appears to be to submit a report to the 1st respondent for necessary action. This is evidenced by paragraph 18 of the 1st respondent's affidavit where it is stated that "Mr. Silva (the 3rd respondent) commenced his inquiries and has submitted reports he has inquired into so far numbering 34 and I have taken necessary action in these cases, and have withdrawn the suspension orders in some such cases." Learned Counsel for the petitioner referred us to the judgment of Soza J. in the case of *Manoharan v. President, Peradeniya Campus,* (4). In that case a student of the Peradeniya Campus, the precursor to the Peradeniya University, was found having with him some pre-written notes in the examination hall. This was a contravention of Chapter VIII, Part I, section 9 (1) and (2) of the General Act of the University of Sri Lanka. A committee of inquiry inquired into this matter and found the petitoner guilty, and in accordance with the recommendations of the committee, approved by the President, the Registrar wrote to the petitioner that he will be deemed to have failed the Final Examination of 1976, in all the papers but will be allowed to sit the 1977 Examination but without eligibility for honours. Part 1 of Chapter VIII of the General Act of the University by Section 9 (5) provided that where the Vice-Chancellor is satisfied that any candidate has contravened or attempted to contravene the provisions of section 9 he may suspend him from the Examination or remove his name from the pass list and report the matter to the Board of Residence and Discipline for such further action as the Board may wish to take. The President claimed that he has been now delegated the powers of the Vice-Chancellor, but proof of that delegation was

not produced. It was therefore held that there was no authority to the Vice-Chancellor to delegate his powers to the President. What is relevant to the submission of learned counsel for the petitioner in this present case is the further finding that, even if such delegation could be proved the President cannot delegate these powers to a committee of inquiry whose rcommendation he has merely approved. In this connection Soza J. says : "In the instant case firstly there is no authority to the Vice-Chancellor to delegate his powers to the President. Secondly even if such power of delegation could be presumed and the President may stand in the shoes of the Vice-Chancellor, still it is not the President who has exercised the quasi judicial powers. He has delegated his powers to a committee of inquiry whose recommendations he has merely approved. It cannot be gainsaid that the committee comprised persons of eminence. Yet the deciding authority should not reduce himself to a rubber stamp of the inquiring body. True in the English Law which we follow it is not always necessary that he who hears must decide. Yet it must be evident that the deciding authority applied his own mind to the facts as found by the committee of inquiry and arrived at his own decision." This authority does not establish the proposition that the disciplinary body cannot appoint a committee of inquiry to report on the subject before that body. It only establishes the proposition that the disciplinary body must ultimately arrive at its own decision.

In the Indian Case of *Ram Chander Roy v. the University of Allahabad* (5) the facts were : the convocation of the University was scheduled to be held in November 1954, but was postponed because the University Union had passed a resolution to boycott the Chancellor when he attended the convocation. The convocation was however held on 3.3.55. That day when the Chancellor came to participate in the convocation slogans were shouted to demonstrate against him, which naturally annoyed the Chancellor and the Vice-Chancellor. The Vice-Chancellor appointed a committee of inquiry consisting of himself and four others to inquire into this incident. After the inquiry the Vice-Chancellor rusticated the petitoner for four years. The petitoner challenged this order on various grounds, one being that the order of the Vice-Chancellor was void in that he was associated in the committee of inquiry with four others whereas the power of maintaining discipline had been conferred on the Vice-Chancellor alone. Bhargava J. delivering the judgment of the court stated :" The

third point urged by learned counsel was that the power of taking action for maintaining discipline had been conferred on the Vice-Chancellor and his order in the case of the petitioner was void inasmuch as in the inquiry he had associated himself with certain other persons who formed the inquiry committee, on the basis of the recommendation of which the order of rustication of the petitioner was passed.

It is true that the power has been conferred on the Vice-Chancellor and it has to be exercised by him by exercising his own discretion, but it appears that this is exactly what the Vice-Chancellor in this case did. A copy of the order made by the Vice-Chancellor forms an annexe to the affidavit filed by the petitioner and it shows that the Vice-Chancellor gave his best consideration to the report of the inquiry committee, which has been constituted by him and thereupon decided to accept the recommendations of the committee.

After coming to this decision he passed the order of rustication on the petitioner which is impugned by this petition. The order, which was finally passed was therefore passed on the basis of the exercise of his discretion by the Vice-Chancellor himself and was not the result of any automatic carrying out of the recommendations of the inquiry committee. In exercising discretion the Vice-Chancellor had the report of the inquiry committee before him as the material on the basis of which he could form his opinion.

The consideration of such material for the exercise of his discretion by the Vice-Chancellor was not prohibited by any law and his order does not become invalid simply because he took the report of the inquiry committee into consideration. For this proposition we are supported by a decision of the Full Bench of this Court in *Basti Sugar Mills Co. Ltd. v. State of Uttar Pradesh. (6)*"

In the instant case there is no material whatsoever that the 1st respondent has delegated his disciplnary powers to the 3rd respondent. The 3rd respondent has been appointed only to inquire and investigate and as averred in paragraph 18 of the 1st respondent's affidavit the 3rd respondent has submitted his reports to him. Even in the case of *Manoharan v. the President, Peradeniya Campus (4)* relied on by the petitioner, Soza J. has nowhere held that the appointment of a committee of inquiry was unlawful. He has

critised the order of the President solely on the ground that the President merely adopted the report of the committee without exercising his individual discretion. In the case of the petitoner in this case that stage has not yet arrived. I am of the view that the 1st respondent had the authority to appoint the 3rd respondent, and the appointment is a valid one.

In the result I would hold that the application of the petitioner must fail, and accordingly his petition is dismissed. The petitioner being only a University Student I make no order as to costs.

H. A. G. DE SILVA, J.–I agree.

Applications dismissed.