

**GUNADASA**  
**v.**  
**ATTORNEY-GENERAL AND OTHERS**

COURT OF APPEAL  
A. DE Z. GUNAWARDANA, J.  
CA 68/87  
NOVEMBER 06 AND 07, 1989

*Writ of Certiorari – Whether non observance of principles of natural justice would amount to an error on the face of the record – Determination by administrative tribunal – Whether liable to be quashed by Writ of Certiorari.*

An application for a Writ of Certiorari was made by the petitioner who was a store-keeper attached to the Food Department, to quash the findings and/or recommendations of the Shortage Committee of the Food Department, that he was liable for a shortage of rice valued at Rs.437,898/74. The said Shortage Committee

had been appointed under Financial Regulation 104(1)(b).

**Held –**

1. That the failure to give the petitioner a fair opportunity to "correct or contradict" the material witnesses when they gave evidence, has occasioned a violation of the principles of natural justice; that a man's defence must always be fairly heard. The non-observance of the said principles of natural justice, would consequently amount to an error on the face of the record, which would attract the remedy of Writ of Certiorari.
2. The failure to make available the documents relevant to the defence of the petitioner, at the hearing, amounted to an error on the face of the record, and the Writ of Certiorari would lie in such situations also.
3. A Writ of Certiorari is available to quash the determination made by an administrative authority or tribunal.

**Cases referred to:**

1. *Kanda v Government of Malaya*, 1962 AC 322
2. *Rex v St. Lawrence's Hospital Statutory Visitors ex.p. Pritchard* 1953 1 WLR 1158, 1166

APPLICATION for Writ of Certiorari to quash findings of Shortage Committee appointed under Financial Regulation.

*P. E. V. Gunadasa* for Petitioner

*Kalinga Indatissa*, State Counsel for Attorney-General

*Cur adv. vult.*

December 07, 1989.

**A. DE Z. GUNAWARDANA, J.**

This is an application for a Writ of Certiorari made by the petitioner, to quash the findings and the recommendations of 3rd to 6th respondents, who consisted the Shortage Committee of the Food Department appointed under Financial Regulation 104(1) (b). According to the findings of the said Committee, the petitioner was held liable for a shortage of rice valued at Rs.437,898/74. The petitioner also seeks to quash the determination of the 2nd respondent, the Food Commissioner, surcharging the petitioner the said sum based on the findings and recommendations of the 3rd to 6th respondents. In addition, the petitioner has prayed for a Writ of Mandamus on the 2nd respondent, directing him to issue a "No Claim Certificate" to the petitioner.

The petitioner was a store-keeper attached to the Food Commissioner's Department, and had worked at Clappenburg Stores, Chinabay, Trincomalee, at the relevant time. He was appointed as

probationary asst. store-keeper on 10.12.58 and continued to serve the department as store-keeper till 8.9.82 when he was compulsorily retired, on the ground of general inefficiency. At the time of retirement he was serving as store-keeper, Grade I. Prior to the petitioner being so retired, charges were framed against him and explanation was called for. The petitioner submitted his explanation but was retired for general inefficiency with effect from 8.9.82. His appeals to the Public Service Commission were not successful. After the said retirement and in order to make arrangements for the payment of the pension the Food Commissioner wrote to the petitioner by letter dated 14.6.83 asking for certain particulars and documents. In addition inquiries were made as to whether any dues were payable by the petitioner to the department. As a result of these inquiries certain shortages were reported from stores managed by the petitioner. Hence the payment of the pension was withheld. Explanation was called for from the petitioner by letter dated 2.7.83 giving the details of the shortages detected at the said stores. Thereafter an inquiry regarding the said shortages was held by the Shortage Committee of the Food Department consisting of 3rd to the 6th respondents, on 16.9.84. On an appeal made by the petitioner, the petitioner was given a further opportunity of being heard by the same Shortage Committee on 15.2.86.

A Writ of Certiorari is prayed for to quash the findings of the Shortage Committee on the basis that there are errors on the face of the record in the proceedings before the said Committee. The proceedings of 16.9.84 are produced, marked P17. It appears that the petitioner and 3 other asst. store-keepers have been summoned for this inquiry. The petitioner's evidence has been recorded in summary form and a few answers given to the questions asked by the Committee are also recorded. This inquiry covers several shipments received at the stores. Of them I will confine my observations to the shipments dealt with in file No. H4 and H11, being the subject matter of the claim for shortages made against the petitioner. With regard to the shipment dealt with in file H4, it is recorded at the start of the inquiry, that the number of bags of rice received is 30133 and the number of bags of rice issued is also 30133. This means that the number of bags received and issued are the same. However in the column where the weight is given it is shown that the amount issued is short by 111 tons 10 cwt 3 qrs and 2 1/4 lbs than the amount received. In addition to recording the

evidence of the petitioner the asst. store-keeper Samaraweera's evidence has also been recorded. In respect of the shipment of rice received on Lanka Rani dealt with the file no. H11, the number of bags received is 13980 and the number of bags issued is also 13980. Here also there is no shortage in the number of bags as in the earlier case. However, there is a shortage in the weight issued, to the extent of 79 tons 9.cwt and 1 qt. In addition to the petitioner, the asst. store-keeper also has given evidence. He has taken up the position that, as he was transferred with effect from 10.7.74 to Boosa, he has not received or issued any stock out of this shipment, and therefore he is not liable for any shortages in regard to this shipment. The continuation of the said inquiry had taken place on 2.10.84 as evidenced by document, marked 2R1. On that date S. Pathkunam, Asst. Controller of Food, Mulaitivu, who was Asst. Controller of Food, Trincomalee during the relevant period has given evidence before the Committee. It is important to note that the petitioner was not summoned nor was he present at this hearing. A further sitting of the Shortage Committee had taken place on 16.2.85, as evidenced by document 2R2. On that date T.A. Piyadasa officer in charge of the Veyangoda stores had given evidence. He was officer in charge of the Clappenburg stores where the petitioner worked during the relevant period. At this hearing too the petitioner was not present nor was he summoned for the inquiry. Thus it is seen that the petitioner had no opportunity of clarifying any matter or asking any questions relevant to the evidence given by the said two witnesses. In fact, material very relevant to the matters in issue have been spoken to by the said two witnesses.

It has been said by Lord Denning in the case of *Kanda vs. Government of Malaya* (1) that,

"If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him and then he must be given a fair opportunity to correct or contradict them."

Hence the failure to give to the petitioner a fair opportunity to "correct or contradict" the said witnesses when they gave evidence, in my view has occasioned a violation of the principle of natural justice, that a man's defence must always be fairly heard. The non

observation of the said principle of natural justice, would consequently amount to an error on the face of the record, which would attract the remedy of Writ of Certiorari.

Wade dealing with such a situation in his book *Administrative Law* (5th Edition) at page 419 states,

“Where an administrative act or decision is vitiated by a breach of natural justice, the court may award any appropriate remedies, the remedy will frequently be certiorari to quash, on the footing that the vitiated decision is void or a nullity.”

On an appeal made by the petitioner to the Food Commissioner, the petitioner was given a further opportunity to represent matters before the same Shortage Committee on 15.2.86. These proceedings are evidenced by document P24. The petitioner's evidence has been recorded in summary form; except for a few questions and answers, none of the other witnesses were available on that date. After hearing the petitioner for the 2nd time the Shortage Committee affirmed the earlier findings.

Counsel for the petitioner submitted that the petitioner was prejudiced and was unable to present his case even on this 2nd occasion, because he had no access to the relevant documents, particularly, (i) stock books, (ii) log books and (iii) monthly returns. He pointed out that petitioner had specifically asked for these documents at this inquiry. At page 3 of the notes of inquiry held on 15.2.86, the petitioner has taken up the position that the rice in question was not fit to be issued and that he has stated so in the monthly returns and log books. He has pointed out that those documents have not been made available to him and has taken up the position that if those documents are available, then he could prove the position taken up by him. He has also stated at page 4 of the notes of said inquiry that records of thefts were kept in the log book. He had asserted that if the log books are available to him, he would be able to prove that the said assertion made by him is borne out by the said documents. At page 5 of the said inquiry notes, he has pointed out that he is unable to give the dates and pages of the record of thefts that took place in 1974, as the 1974 log book is not available to him. Counsel for the petitioner submitted that these instances show that the non availability of the documents has gravely prejudiced his defence, and in fact incapacitated him from proving his innocence. He added that the contents of those documents would bear out the explanation

given by the petitioner as to how those shortages would have occurred. Counsel submitted that, therefore, there is an error on the face of the record in the failure to make the relevant documents available to the petitioner at the hearing, and that error vitiated the findings of the Shortage Committee.

Thus it is seen from the evidence of the petitioner, and the submissions made by counsel, that the relevant log books, stock books and the monthly returns were necessary to prove the explanations given by the petitioner for the shortages.

However, the Counsel for the State pointed out that, at page 1 of the notes of inquiry on 15.2.86, the petitioner has stated that he is presenting his case after perusal of the relevant documents and files. But the State Counsel did not dispute the contention of the Counsel for the petitioner, that the particular log books, stock books and monthly returns asked for by the petitioner were not available to the petitioner at the said inquiry.

I am of the view that there is merit in the submission that the non-availability of the said documents prejudice the proper presentation of the petitioner's defence and that such failure to make available the said documents amounted to an error on the face of the record.

It has been pointed out by Wade in his book Administrative Law at page 283-284 that,

"... the ambit of error of law is wide. It includes, for example, procedural mistakes, and where a tribunal wrongly refused an adjournment which was necessary in order to allow the applicant to produce relevant evidence."

In my view the situation that arose in this case too is similar and would be tantamount to an error on the face of the record. Hence on this ground too a Writ of Certiorari would lie in this case.

There are two important issues involved in this case, one being the alleged loss to the Government in a sum of Rs.437,898/74 and the other being the consequential loss of pension rights of the petitioner as a result of the petitioner being held liable for the said shortages. It is necessary that, if in fact the Government has lost such a large amount of money, the person responsible must be ascertained and held liable. On the other hand if the liability cannot be attached to the petitioner then it is only fair that he should not be penalised.

Therefore, it is imperative that a full and a fair inquiry be held to the circumstances under which those shortages have occurred, and the persons responsible be held liable. Hence this court will issue a Writ of Certiorari quashing the findings and/or recommendations of the said Shortage Committee, and direct that a fresh inquiry be held, before persons other than the 3rd to the 6th respondents, since they have already formed an opinion. Such inquiry should be conducted with due regard to the matters I have referred to above.

The petitioner has also prayed for the issue of a Writ of Certiorari to quash the determination made by the 2nd respondent to surcharge the petitioner in the said sum of Rs.437,898/74. This determination is based on the findings and the recommendations of the said Shortage Committee consisting the 3rd to the 6th respondents. In view of the fact that this Court has ordered the quashing of the findings and/or recommendations of the said Shortage Committee, and a fresh inquiry be held, should result in the said determination of the 2nd respondent also being set aside. Accordingly a Writ of Certiorari is issued to quash the said determination of the 2nd respondent.

It has been held in the case of *Rex vs. St. Lawrence's Hospital Statutory Visitors ex.p. Pritchard (2)* that a Writ of Certiorari is available to quash such determination. Parker J. in the said case stated,

"It cannot be too clearly understood that the remedy by way of Certiorari only lies to bring up to this court and quash something which is a determination or a decision."

As the said determination of the 2nd respondent is quashed and a fresh inquiry is ordered, the issue of a Writ of Mandamus as prayed for by the petitioner requiring the 2nd respondent to issue a "No Claim Certificate," will not arise.

There will be no order for costs.

*Writ of Certiorari issued.*