

DISSANAYAKE

v.

UNIVERSITY OF SRI JAYAWARDENAPURA AND
TWO OTHERS

SUPREME COURT.

SHARVANANDA, C.J., ATUKORALE, J. AND H. A. G. DE SILVA, J

S.C. APPLICATION No. 120/85

FEBRUARY 27 and 28, 1986

MARCH 12, 13 AND 14, 1986.

Fundamental rights—Freedom of speech and publication—Freedom of movement—Articles 14(1)(a), (c) and (h) and 15(2) and (7) of the Constitution—Rule 16(11) of University Handbook—Abridgement or restriction of fundamental rights by regulation—Prior restraint—University discipline.

The fundamental rights guaranteed by Article 14 of the Constitution are not absolute but are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery. The guarantee of freedom of speech spelt by Article 14(1)(a) of the Constitution is subject to the qualification that it should not violate or infringe the rights of others. The right of freedom of speech has also to be subordinated to the obligation of the State and its agencies to maintain order and discipline. The right is not free from regulation imposed in the interests of efficiency, discipline, health, morality, public order and the like.

Article 14(1)(a) does not give a *carte blanche* to University students to violate the rights of the Vice-Chancellor by publishing baseless allegations respecting his administration or by defaming him. The students' rights must be measured and applied in the light of the special exigencies of the University environment. Students are bound by reasonable rules governing conduct. A student who enrolls himself in the University places himself under the disciplinary control and powers of the Vice-Chancellor. In prescribing and controlling conduct in the name of discipline, the Vice-Chancellor however should have regard to the Constitutional rights of the students and should not restrict those rights beyond what is reasonably required by the imperatives of discipline. A student cannot be faulted if he in the exercise of his rights protests to the proper authorities against the conduct or shortcomings of the Vice-Chancellor. But calculated falsehood as distinct from mere erroneous statement is outside Constitutional protection. Adjudication of the students' complaint requires such complaint to be considered as a whole and in a fair free and liberal spirit. Such adjudication should not be on stray sentences and phrases and isolated passages. In judging the effects of the writing the standard to be employed must be of a reasonable person and not of one who scents malice in every hostile point of view. It is not permissible to stifle all airing of grievances by attributing motives. The correct test is: was the statement made in criticism of the official conduct of the Vice-Chancellor or was a false statement made with a high degree of awareness of its probable falsity.

The petitioner may be entitled to report the conduct of the 2nd respondent to His Excellency the President or to any other authority who has supervisory power over his activity but he would be exceeding his right, if he publishes the report to others who exercise non-supervisory control over the Vice-Chancellor. It is the Fundamental Right of a University student to approach the President with grievances and suggestions for better University administration. His right of unimpaired access to the President cannot, in the name of discipline be inhibited by the Vice-Chancellor. To the extent that Rule 16:11 of the University handbook fetters the students' right of access to the President, it infringes the students' fundamental right of speech and expression and is invalid.

Even if the petitioner falsely claimed to act on behalf of the students of the University it is he who would be responsible for the contents of the complaint and it would be a matter for the President to act on it or not.

A university is entitled to take measures to protect its interests and reputation and those of its staff from being trampled upon by its students. Compelling University interest is the justification for anticipatory prior restraint of freedom of speech and expression where such speech and expression materially and substantially interferes with school activities or the rights of other students and the staff. Hence Rule 16:11 does not impose unreasonable restrictions on the petitioner's freedom.

The restraint on speech does not exceed the ambit of permissible regulation. There is no justification for issuing the contents of the memorandum which contained disparaging or defamatory statements about the Vice-Chancellor and sections of the staff to the newspapers. Public criticism of the Vice-Chancellor by students would seriously undermine the Vice-Chancellor's authority in the University. The University has a legitimate interest in preventing disruption of its examinations and taking preventive action against such disruption. There is no question of a violation of petitioner's rights of free speech or any other right when disciplinary action is taken against him for disrupting examinations and he is suspended from college and the University premises are placed out of bounds for him.

Cases referred to:

- (1) *Adkins v. Childrens' Hospital*—261 U.S. 525, 56.
- (2) *Amand v. Thompson*—(1968) 390 U.S. 727, 737.
- (3) *Baumquartner v. U.S.*—(1944) 323 U.S. 665, 673, 674.
- (4) *Near v. State of Minnesota*—(1931) 283 U.S. 697, 715, 716.
- (5) *Chaplinsky v. State of New Hampshire*—(1942) 315 U.S. 568, 571, 572.

R. K. W. Gunasekera with J. Yusoof, Senaka Weeraratne and Bandula Wijesinghe for the petitioner.

K. N. Choksy, P.C. with D. H. N. Jayamaha, A. L. B. Britto Mutunayagam and Miss T. Rodrigo, instructed by D. F. R. Jayamaha for 1st and 2nd respondents

Cur. adv. vult.

June 23, 1986.

SHARVANANDA, C.J.

The petitioner is a third year internal student of the University of Sri Jayawardenapura and is reading for the special degree in Business Administration of that University. The 2nd respondent is the Vice Chancellor of the University of Sri Jayawardenapura (the 1st respondent) and is its principal executive officer. He is responsible, *inter alia*, for the direction, supervision and control of the University, including its administration and for the maintenance of discipline within the University.

In his petition to this court, the petitioner states that on September 20, 1985, the day when internal examinations in the University were being held, an internal student was assaulted and cut by a sword by some outside persons, within the premises of the University. The petitioner and other students questioned the officials in charge of security of the University, as to why they failed to prevent the occurrence of such events. The petitioner and others were then set

upon by the Security Officials who had in their possession, an arsenal of weapons, which included swords, guns and bottles and iron clubs. An unsettled condition spread over the entire campus and some students fearing for their lives left the campus grounds. The University authorities then announced that the University had been closed indefinitely and the examinations were postponed and ordered the students in the hostels to leave them immediately. The students then left the University premises, but left most of their belongings in the halls of residence. On September 24, 1985 the halls of residence of the University were broken open and the belongings of the students including their books and notes were burnt and destroyed. On September 27, 1985, the Vice-Chancellor announced that the examination for Management Studies and Commerce students would be held commencing on October 11, 1985. The petitioner and some other students then requested the Vice-Chancellor to postpone the examination and to give the students a period as study leave in view of the recent disturbances at the campus. The 2nd respondent, however refused to accede to the request and indicated that the examination would be held as notified. On 7th October 1985, the petitioner purporting to act on behalf of the students of the University sent the following memorandum to His Excellency the President, who is also the Minister-in-charge of Higher Studies.

P2

University of Sri Jayawardenapura,
Nugegoda,
October 7, 1985.

His Excellency J. R. Jayewardene,
President,
Democratic, Socialist Republic of Sri Lanka.

Your Excellency,

We had the occasion even earlier to draw Your Excellency's attention to the immense damage done on or about 20th September and the uncertain and confused situation that arose thereafter under the autocratic and destructive administration of the present Vice-Chancellor Mr. Karunasena Kodituwakku of Sri Jayawardenapura University.

From the moment Mr. Karunasena Kodituwakku took over the University Administration up to date he has never listened to the voice of the peace-loving students who value fairness and justice. In the face of present happenings the autocratic administration of the Vice-Chancellor, can lead to the collapse of University administration.

Therefore with a genuine desire to restore a peaceful environment in the University we forward the following suggestions to Your Honour. We appeal to you to be kind enough to act accordingly to ensure the safety of lives of students.

Our proposals:

- (1) The Police should be permitted to conduct inquiries in accordance with normal law of the land on the pillage, robbery and destruction of books, lecture notes, clothes belonging to the students in the hostels, and on threats to the life of students, assault of students perpetrated in the University premises on or about Friday, 20th September, 1985 with the connivance, tacit approval and assistance of the University Administration.
- (2) The immediate removal of Mr. Karunasena Kodituwakku, the Vice-Chancellor who is totally responsible to this great calamity.
- (3)
 - (i) Desist from creating parallel posts such as the Competent Authority to take over powers and duties of the Vice-Chancellor
 - (ii) Appoint to the vacancy of Vice-Chancellor a Professor who is nominated by the Academic Staff Union at a General Meeting on a two-third majority and commanding acceptance of students, academic staff and the non-academic staff.
 - (iii) Under no circumstances should an outsider be appointed to the post of Vice-Chancellor.
- (4)
 - (i) Immediate steps should be taken to stop the acts of thuggery now carried on surreptitiously by the Security Section, Maintenance Section and some other sections of the University.
 - (ii) Dismiss the chief of the Security Section who contributed to this immense rampage and reorganise the Security Section.
 - (iii) Remove the main Warden who assisted in the destruction of life and property of students at the hostels and re-organise the hostel administration.
 - (iv) Take immediate steps to stop the trespassing of outsiders within the University premises.
 - (v) Desist from calling Police forces into the University premises under any circumstances.
 - (vi) The University Administration must assure the safety of students life and property.
- (5) A special committee made up of representatives of the general studentship and representatives appointed by the academic staff union on a two third majority vote should be appointed immediately and the tasks of monitoring the security within University premises and the provision of advisory service to the administration to be handed to it.

- (6) A formal student body should be instituted as provided for under the 1978 Universities Act to maintain official relations with the University Administration.
- (7) The proceedings of the Committee of Inquiry appointed by the University Council at the Special Meeting held on 26th September, 1985 to inquire into and report on the incidents that occurred in the University premises on or about 20th September, 1985 should be stopped immediately and the committee should be dissolved. We strongly condemn the shameless witch hunt of students activities who value justice and fair play, by this pseudo inquiry committee which has been appointed from among the University Council which is devoid of independence.
- (8) The holding of examinations according to the time tables now announced without holding formal Police inquiries with the general acts and robbery that has taken place and without any guarantee or responsibility students, should be stopped immediately. Specially notes, books, equipment and clothes of a large number of students who were residents of hostels have been destroyed or robbed. Therefore, in order to prepare for the impending examinations adequate study leave should be provided. Hostels and all sections of the Library should be kept open during the period of study leave.
- (9) His Excellency the President should appoint a Commission of Inquiry consisting of three retired Judges of the Supreme Court to inquire into all irregularities, administration lapses and dictatorial administration of Mr. Karunasena Kodituwakku from the time he was appointed as the Competent Authority of the University of Sri Jayawardenapura to date.

Thank you.

Yours faithfully,

Sgd. Bandara Dissanayake

On behalf of the Students of the
University of Sri Jayawardenapura.

Copies to:

1. Vice Chancellor, Sri Jayawardenapura University.
2. All Lecturers of Sri Jayawardenapura University.
3. All heads of non-academic sections of Sri Jayawardenapura University.
4. Chairman, University Grants Commission.
5. Deputy Minister of Higher Education.
6. Vice-Chancellors of all Universities of Sri Lanka.
7. All members of the Parliament of the Opposition.
8. Governor, Inter University Students Federation.

Copies of this memorandum were distributed to the teaching staff of the University also. On October 15, 1985, the petitioner received a letter P3 dated 10th October, 1985 from the 2nd respondent charging him with a number of allegations. He received

also the letter dated October 15, 1985 marked P4 from the Vice-Chancellor, declaring the University premises out of bounds to the petitioner. The Charge Sheet marked P3 is as follows:

P3

"UNIVERSITY OF SRI JAYAWARDENAPURA, SRI LANKA

Nugegoda,
Sri Lanka.
October 10, 1985.

My. No. 69 /1.

Mr. Dissanayake Mudiyansele Muthubanda Dissanayake,
Registered No. A 15766,
Faculty of Management Studies and Commerce.

CHARGE SHEET

As it has been reported that, while being a student of the Faculty of Management Studies and Commerce in this University, you have violated university rules by resorting to the following acts of indiscipline, you are hereby required to submit to me in writing within one week your explanation therefor to be forwarded to the disciplinary board.

- I. Issuing and publishing on 7th October, 1985, without any permission from the University authorities, a leaflet claiming to be 'on behalf of the students of Sri Jayawardenapura University.'
- II. Acting in such a manner as to bring the University into disrepute by the issue of the contents of this leaflet to the newspapers.
- III. Acting in such a manner as to cause insult to officers of the Sri Jayawardenapura University by the inclusion of untruths in the leaflet.
- IV. Distributing this leaflet on 07.10.1985 at the time of holding end-of-the-year examinations at the Bandaranaike Hall of the Sri Jayawardenapura University
- V. Disrupting the following examinations that were scheduled to be held at the Bandaranaike Hall on 07.10.1985:
 - Compulsory English B.A. (General) Degree II
 - Compulsory English B.A. (Special) Degree II

2. You are also further informed that if your explanation is not received by me within the stipulated time, it will be presumed that you have no explanation to offer and that the matter will be referred to the disciplinary board for further disciplinary action on these charges preferred against you:

Sgd. Karunasena Kodituwakku,
Vice-Chancellor.

Copy to:

Mr. D. M. Muthubanda Dissanayake,
39, Attaragalla,
Galgamuwa.

P4 reads as follows:

"UNIVERSITY OF SRI JAYAWARDENAPURA, SRI LANKA

Nugegoda,
Sri Lanka.
15.10.1985.

My. No. /1.

Mr. D. M. M. Dissanayake,
Regd. No. 15766,
Faculty of Management Studies and Commerce.

Further to the charge sheet dated 10.10.1985 of even number.

As it has been reported that even after the events stated in this charge sheet you have been engaged in such things as disrupting examinations by creating unnecessary trouble, you are hereby informed that until the disciplinary board makes a decision on this matter, the University premises are made out of bounds for you with immediate effect.

Sgd. Karunasēna Kodituwakku,
Vice-Chancellor.

Copies to

- (1) Dean
- (2) Chief Security Officer
- (3) Sub Warden, Lady Margerent Hostel
- (4) Senior Assistant Registrar, Exams
- (5) Assistant Registrar, Academic
- (6) Parents-Guardian - Mr. D. M. Kiribanda,
No. 39, Ataragalla,
Galgamuwa.

The petitioner states that he has been a student leader, and that he expressed, whenever necessary, the views of the student body and had consequently earned the displeasure of the 2nd respondent. The petitioner complains that the 2nd respondent's attempt to punish him on the grounds set out in his letter dated 10th October 1985 (P3) is contrary to and is in violation of the freedom of speech and expression including publication guaranteed by Article 14(1)(a) of the Constitution and his act of keeping the petitioner out of bounds of the University premises is in violation of the freedom of association guaranteed by Article 14(1)(c) of the Constitution. The petitioner further states that the prohibition of his entry into the University

campus by the Vice-Chancellor, as conveyed by his letter dated 15.10.1985 constitutes an infringement of his fundamental right of freedom of movement guaranteed by Article 14(1)(h) of the Constitution.

The Vice-Chancellor (2nd respondent) has, in his affidavit, set out his version of the tense situation that prevailed in the University which necessitated the closure of the University. He has also stated the reason for the action contemplated in charge sheet P3 and P4. He states that he was compelled to issue P3 and P4 on account of the petitioner's own wrongful acts namely—

- (1) the unauthorised publication of the memorandum dated 07.10.1985 (P2), and
- (2) the disruption of the examinations by the petitioner.

He said that the memorandum to His Excellency the President had not been submitted through the normal channel and that the memorandum contained false statements against him and the University staff, bringing the University and its staff into disrepute. He said that the petitioner had no right to sign or distribute the said memorandum on behalf of the students as the petitioner did not hold any office in any organisation representing the students. He referred to a booklet marked R17, issued to students on admission which sets out the procedure that should be followed in making complaints. He stated that the petitioner had breached section 16:11 of R17. The Vice-Chancellor has also stated that the petitioner had disrupted the examinations held on 7th October 1985 at the Bandaranaike Hall. He said that the charge sheet P3 was, in the circumstances issued by him calling upon the petitioner to explain his conduct. He further stated that the petitioner continued his wrongful conduct and together with others disrupted the conduct of the examination on 14th October 1985. He has filed report marked R19 from Dr. Mahanama Karunaratne, Supervisor of the examination and report marked R20 from the student-councillors Prof. K. A. Munasinghe, Dr. Nanayakkara, Dr. Abaya Bandaranayake and Dr. Edwin Ganihigama, which testify to the disruption of the examination by the petitioner and others. He further stated that other students A. P. K. Dharinapriya, H. M. C. Seneviratne and M. M. Asanka Gunatillake have also been suspended for disruption of the examinations and that after suspension of the offending students the examinations were conducted without incidents. The 2nd respondent claims that the suspension of the

students had to be done in the interest of discipline of the University and that he had acted in accordance with the provisions of the University Act No. 16 of 1978, especially section 34(b) which provides that—

“The Vice-Chancellor shall be responsible for the maintenance of the discipline of the University.”

He categorically denied that there was any infringement of the fundamental rights of the petitioner.

The 1st and 2nd respondents have urged that the petitioner is not entitled to any relief in view of the serious acts of misconduct committed by him, by the publication and distribution of memorandum marked P2 and the disruption of the examination caused by him.

Absolute or unrestricted individual rights do not and cannot exist in a modern State. “The liberty of the individual to do as he pleases even in innocent matters, is not absolute. It must frequently yield to the common good.” *Adkins v. Children’s Hospital* (1). Social control is needed to preserve the very liberty guaranteed. All rights are only relative and not absolute. The principle, on which the power of the State to impose restriction is based, is that all individual rights of a person are held subject to such reasonable limitations and regulations as may be necessary or expedient for the protection of the general welfare. Complete freedom—unfettered and undirected—there never is. The State has inherent power to regulate the how and where of the exercise of the freedom. A balance has to be struck between individual and social control. The fundamental rights guaranteed by Article 14 of the Constitution are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery. The guarantee of freedom of speech, spelt by Article 14(1)(a) of the Constitution, does not give an absolute protection for every utterance. Libellous utterance is not within the area of constitutionally protected speech. The right conferred by this Article must not violate the rights of others. That right is subject to the qualification that it should not violate or infringe the rights of others. Further the right of freedom of speech has to be subordinated to the obligation of the State and its agencies to maintain order and discipline. So long as society and civilization exist, it is difficult to conceive an absolute right. Every right

has a corresponding duty limiting the exercise of that very right. This renders the 'right' to be reasonably exercised so as not to come into conflict with the rights of others. The exercise of any right must not lead to any wrong on individuals, institutions, society or State. Individual rights have therefore, necessarily to be restricted by certain limitations in the interests of decency, public order, morality, security of the State etc. Thus for instance, the right to free speech should not justify a man shouting fire in a crowded stadium or causing a panic or raising a false alarm that bombs are planted in various buildings and workplaces. Freedom of speech does not mean freedom to shout out needlessly or to communicate one's views at all times and places in any manner that may be desired. Exercise of right of free speech demands observance of the co-equal duty not to abuse such right, but rather to utilise it with reason and discretion.

It is a total misconception to say that because the exercise and operations of the fundamental rights declared by Article 14 may be restricted only by law in the areas specified in Article 15(2), (7), the exercise of the rights cannot be regulated or that every regulation of those rights would be an abridgment or restriction of those rights, no rights however absolute, can be free from regulation. Regulations made in the interests of efficiency, discipline, health, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the operation of the guaranteed rights. Freedom has never been antithetical to regulation. A man may be denied the privilege of speaking at a meeting because someone else has the floor; freedom of speech is not thereby abridged. A person has a right of access to the authorities but the time and the manner of presentation of his complaint may be determined not by his own choice but by carefully prescribed regulations. To interpret Article 14 as forbidding such regulation is to misconceive the meaning of that article. Therefore the freedom which Article 14 protects is not the absence of regulation. It only means that no law shall be made abridging the freedom except for the purposes set out in Article 15. Speech in areas not covered by Article 15 can be regulated in order that the exercise of the fundamental freedom of speech may not conflict with similar rights of others. The State has the right to regulate

the exercise of a fundamental right in order to prevent it being abused, though it cannot curtail the right itself except on permissible grounds. The question is whether the particular measure is regulatory or whether it transgresses the zone of possible regulation and gets into the forbidden territory of restriction or abridgement. Any regulatory scheme impinging upon fundamental rights should therefore be closely scrutinised. The right of free speech may not be abridged in the guise of regulation.

Article 14 of the Constitution deals with those great and basic rights which are recognised as the natural rights inherent in the status of a citizen. It assures that every citizen is entitled to the freedoms enumerated therein. The petitioner complains that the action of the Vice-Chancellor violates his fundamental rights of speech and association. In determining the validity of this complaint, one has to bear in mind that Article 14(1)(a) does not give a *carte blanche* to University students to violate the rights of the Vice-Chancellor by publishing baseless allegations respecting his administration or by defaming him.

The University is not an enclave immune from the sweep of the Fundamental Rights guaranteed by the Constitution. A student does not discard, or shed his fundamental rights of speech, association etc., when he enters the University gate. But, he consents to the regulation of his constitutional rights in keeping with the special characteristics of the University environment. Rights of University students cannot be co-extensive with those of adults. While a student is entitled to protection of his constitutional rights, his rights are subject to certain restriction not imposed on adult citizens; his rights must be measured and applied in the light of the special exigencies of the University environment. Students are bound by reasonable rules governing conduct. A student who enrolls himself in the University places himself under the disciplinary control and powers of the Vice-Chancellor. What is discipline is well-known and needs no definition. The Vice-Chancellor is responsible for maintaining discipline. The disciplinary authority vested in him is absolutely necessary for the peaceful functioning of the University. The student's rights have to yield to the authority of the Vice-Chancellor in the matter of discipline. The Vice-Chancellor is entitled to expect that the

students adhere to generally accepted standards of conduct. The power of the Vice-Chancellor to take disciplinary action extends to action which materially and substantially disrupts the activities of the University. In prescribing and controlling conduct, in the name of discipline, the Vice-Chancellor, however should have regard to the Constitutional rights of the students and should not restrict these rights beyond what is reasonably required by the imperatives of discipline. The disciplinary authority vested in him cannot be used by the Vice-Chancellor to deprive students of their fundamental rights altogether. It should be stressed that right of free speech is nowhere more vital than in Universities.

Though the Vice-Chancellor has inherent statutory authority to maintain order and is permitted latitude and discretion in formulating rules and regulations regarding general standards of conduct, even a legitimate interest in University discipline does not outweigh a student's right to peacefully express or communicate his views or grievances in an appropriate manner. The right to air grievances, is included in the concept of freedom of speech. It is the constitutional right of every citizen to petition the authorities for redress of grievances real or imagined. A student cannot be faulted if he in the exercise of this right protests to the proper authorities against the conduct or shortcomings of the Vice-Chancellor. Censorship of letters to the authorities critical of University administration and suggesting remedial measures inhibits students from availing themselves of their constitutional right of speech and would be violative of that freedom. However use of calculated falsehood would put a strain on this constitutional right. Although honest utterances and criticism, even if inaccurate may be protected, it does not follow that a lie, knowingly and deliberately published should enjoy a like immunity. A false statement made with a high degree of awareness of its probable falsity, as distinct from erroneous statement, puts a different cast on constitutional protection.

Having regard to the dimensions of a University student's freedom of speech the question arises whether the 2nd respondent as Vice-Chancellor is entitled to question the propriety of the petitioner publishing the document P2 to the various recipients and to make the order contained in P4 against the petitioner for disrupting the examination conducted by the University.

Adjudication on the petitioner's complaint requires the writing P2 to be considered as a whole and in a fair, free and liberal spirit. It would be wrong to view the document with an eye of narrow and fastidious criticism. Regard must be had to the substance of the writing and its tenor. It is not right to pick up a strong expression here and there. It is not permissible to form an opinion about the nature and contents of the writing and its possible effect by dwelling too much upon stray sentences or phrases and isolated passages. One must not read too much between the lines of the writing. An endeavour should be made to gather the general purpose of the writing. In judging the effects of the writing, the standard to be employed must be of a reasonable person and not of one who scents malice in every hostile point of view. It is not permissible to stifle all airing of grievances by attributing motives. The correct test is: was the statement made in criticism of the official conduct of the Vice-Chancellor or was a false statement made by the petitioner with a high degree of awareness of its probable falsity. A student may also exceed his constitutional rights of speech and expression by adopting methods of expression that materially and substantially interferes with the Vice-Chancellor's right to his reputation. For, nobody can use his freedom of speech or expression as to injure another's reputation. The petitioner may be entitled to report the conduct of the 2nd respondent to His Excellency the President, or to any other authority who has supervisory power over his activity, but he would be exceeding his right, if he publishes the report to others who exercise no supervisory control over the Vice-Chancellor.

The burden of the charge-sheet (P3) is that the petitioner has violated University rules by issuing and publishing the leaflet (P2) claiming to be on behalf of the students of Sri Jayawardenapura University. The rule which the petitioner is alleged to have breached is Rule 16:11 of the University handbook (R17). The rule provides that:

"No publication causing insult or blemish to the University or to any person connected to the University should be made during the period in the University as student. Publication bearing no names and addresses should not be distributed within the University. The prior written permission of the Vice-Chancellor should be obtained when necessity arises to make such a statement or publication. The Vice-Chancellor is empowered to take any disciplinary action against anyone responsible for distributing any unauthorised statement."

In respect of the alleged breach by the petitioner, the 2nd respondent has stated in his affidavit:

"I state that the memorandum dated 7.10.85 to His Excellency the President, has not been submitted through the normal channel and no communication has been received from the office of the President regarding the matter. I deny that the petitioner has any right to sign or distribute the said memorandum on behalf of the students as the petitioner did not hold any office in any organisations representing students..... The petitioner has without authority released the said memorandum to newspapers called 'Divayina' of 8.9.85 and 'Dinakara' of 10.10.1985 marked R16(a) and R16(b). The memorandum contains false statements bringing the staff and the University into disrepute."

It is to be noted that the memorandum P2 is addressed to His Excellency, the President who is not only the Head of the State, but also the Minister of Higher Education, responsible for the general direction of University education and the administration of the Universities Act No. 16 of 1978 as amended by Act No. 7 of 1985. Amended section 34 of the Act provides that:

- (1) (a) The Vice-Chancellor shall be appointed for a term of three years by the President upon the recommendation of the Commission (University Grants Commission) from a panel of three names recommended by the Council of that University.
- (b) The Vice-Chancellor of a University may be removed from office by the President, after consultation with the Commission.

It is the fundamental right of a University student to approach the President with grievances and suggestions for better University administration. His right of unimpaired access to the President cannot, in the name of discipline, be inhibited by the Vice-Chancellor. To the extent that Rule 16:11 of the University handbook fetters the student's right of access to the President, it infringes the student's fundamental right of speech and expression and is invalid. The 2nd respondent has overreached himself in demanding of the petitioner

that the petitioner should get his prior permission before he sent the memorandum to the President, permission which he could, in his absolute discretion give or withhold. This censorship constitutes an impediment to the right of access to the President. The requirement that a student should obtain prior permission as a prerequisite of his having access to the President, constitutes an impediment to his right of access to the President and abridges his freedom of speech and expression. A student may hesitate to make a complaint against the Vice-Chancellor to the President for fear that he may be accused of committing the offence of making a false and malicious allegation.

It is said that the petitioner, in sending the memorandum to the President, has falsely claimed to send it on behalf of the students of Sri Jayawardenapura University. It is a matter for the President to act on the memorandum or not. The petitioner, since he has signed the memorandum, is responsible for the contents of the memorandum, whether he purported to petition the President on behalf of the students of the University or not. It is not necessary that the petitioner should be a member of any union, society or other association, recognised or registered under section 115 of the Universities Act to claim to speak on behalf of the students of the University. He did not claim to write on behalf of any such Union or Association; all that his representation means is that a certain section of the University students have authorised the petitioner to forward the petition. It is for the President to determine what value should be attached to the document and what action should be taken on it. The President will not ordinarily initiate any action grounded on that memorandum without checking on the authenticity of the writing. I hold that the questioning of the propriety of the petitioner sending the memorandum to the President impinges on the petitioner's fundamental right of speech and expression. The truth of the allegations against the Vice-Chancellor contained in that memorandum is not relevant for determining whether that right exists. *Amand v. Thompson* (2). The right to criticise public men and measures is not confined to informed and responsible criticism but includes the freedom to speak "foolishly and without moderation" *Baumgartner v. U.S.* (3).

Freedom of speech and expression includes the freedom of propagation of ideas and this freedom is ensured by the freedom of circulation. Liberty of circulation is as essential to that freedom as the liberty of publication. This freedom is not intended to protect every utterance; libellous utterances are not within the area of constitutionally protected speech. This freedom does not confer a licence to defame another citizen. Nobody can so use his freedom of speech as to injure another's reputation. Rule 16:11 of the University handbook prohibits publication causing insult to the University or to any person connected to the University. The charge sheet P3 alleges that the petitioner issued and published, without any permission from the University authorities the leaflet P2 and issued the contents of the leaflet to the newspapers. Admittedly the petitioner had published the memorandum not only to the President and the Chairman, University Grants Commission but sent copies of it to the persons set out in P2 and to the staff of the University and to the papers 'Divayina' and 'Dinakara'.

It was submitted by counsel for petitioner that 'Freedom of Speech' predicates freedom from 'prior restraint'. Imposing pre-censorship or prior restraint is a restriction on the freedom of speech. Freedom of speech in its essence involves no previous restraint on utterance or publication. As freedom of speech is not absolute, previous restraint is not necessarily unconstitutional under all circumstances. The protection as to previous restraint is not absolutely unlimited. Certain limitation is recognised in certain exceptional cases. The primary requirement of decency may be enforced against obscene publications; the security of the community-life may be protected against incitements to acts of violence and the overthrow by force. Vide *Near v. State of Minnesota* (4).

"There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libellous and the insulting or fighting words – those which by their very utterance inflict injury or tend to incite an immediate breach of the peace."

Chaplinsky v. State of New Hampshire (5). Time, place and content of proposed speech or publication are relevant considerations in determining whether the speech or publication should be restrained in advance. Hence a University is entitled to take measures to protect its interests and reputation and those of its staff from being trampled upon by its students. Prevention is better than cure. Expression by University students can be prohibited if it materially and substantially interferes with school activities or with the right of other students or teachers or if the Vice-Chancellor has reasonable cause to believe that the speech would engender such material and substantial interference. Compelling University interest is the justification for such anticipatory restraint. Publication of a defamatory matter may be thus prohibited or prior written permission for such publication may be insisted on. A University must have power appropriately to protect itself.

As stated earlier the fundamental rights of students must always be viewed in the perspective of the special characteristics of varsity environment. Interest of proper education calls for discipline, under the head of public order and morality, which has to be enforced by the Vice-Chancellor within reasonable limits. For the above reasons Rule 16:11 cannot be said to impose unreasonable restrictions on the petitioner's freedoms. The restraint on speech does not exceed the ambit of permissible regulation. There is no legal justification for issuing the contents of the memorandum which contained disparaging or defamatory statements about the Vice-Chancellor and sections of the staff to the newspapers. Public criticism of the Vice-Chancellor by students would seriously undermine his authority in the University. The Vice-Chancellor is entitled to take proceedings against the petitioner for breach of Rule 16:11; such action does not infringe the petitioner's freedom of speech and expression.

If the petitioner had been engaged in disrupting examinations and disciplinary action is taken against him as being suspended from college, and the University premises made out of bounds with immediate effect, there is no question of violation of his rights of free speech or any other right. The University has legitimate interest in preventing disruption of its examinations and taking preventive action against such disruption.

It is to be noted that no question of restriction of academic freedom arises in this case. The liberty to discuss publicly and truthfully all matters of public concern or to interchange ideas for bringing

about political and social change has not been restricted by the 1st and 2nd respondents. The freedom, not only for the thought we cherish but also for the thought we hate, is intact for the students. There has been no attempt to assume guardianship of the student's mind. The University has not restricted speech or association on the ground that the views expressed by the petitioner are hateful to it. The students remain free to discuss, study, advocate and propagate ideas.

Subject to what is stated of the petitioner's right of sending without obtaining the prior permission of the Vice-Chancellor, the memorandum P2 to the President and Chairman, University Grants Commission, the contention that the petitioner's fundamental rights have been violated by the 1st and 2nd respondents and that the letters P3 and P4 are in violation of his rights under Article 14(1)(a), (c) and (h) cannot be upheld.

I refuse the petitioner's application and vacate the interim order made by this Court. In the circumstances there will be no order for costs.

ATUKORALE, J. — I agree.

H. A. G. DE SILVA, J. — I agree.

Petition dismissed.
