

JOAPE ROKOSOI MATATOLU AND OTHERS

v.

THE ATTORNEY GENERAL AND OTHERS

[SUPREME COURT, 1977 (Grant C. J.), 23rd February]

Civil Jurisdiction

Local Government—dissolution of council—appointment and function of inspectors—appointment of committee of inquiry—whether administrators entitled to act—Local Government Act 1972 ss. 123, 128, 131—Local Government (Inquiries) Regulations 1977—Local Government (Administrators) Regulations 1977—Whether Regulations intra vires the Act.

Local Government—Committee of Enquiry—dissolution of Council—appointment of administrators—whether breach of rules of natural justice.

The Minister of Urban Development, Housing and Social Welfare appointed inspectors to examine the administration of the Suva City Council and also appointed a Committee of Enquiry.

Upon receiving the report of the Committee the Minister dissolved the Council and appointed administrators in its place. The plaintiffs, who were former councillors, sought declarations that the Minister had exceeded his powers and that the Committee of Enquiry had failed to observe the rules of natural justice. They also sought an injunction restraining the administrators from exercising their functions. All applications were refused.

Cases referred to:

Local Government Board v. Arlidge [1915] A.C. 120;

Martin v. Union Steamship Co. of New Zealand Ltd [1951] 83 C.L.R. 402;

Carltona Ltd v. Commissioner of Works [1943] 2 All E.R. 560;

Hall & Co. Ltd v. Shoreham—by—Sea U.D.C. [1964] 1 W.L.R. 240;

Mixnams Properties Ltd v. Chertsey U.D.C. [1965] A.C. 735.

Action for declaratory Judgment in the Supreme Court.

V. Parmanandam for the plaintiffs.

M. J. Scott for the defendants.

GRANT C. J. :

Until the 28th October 1977 there were, at all material times, twenty councillors of the Suva City Council duly elected in conformity with the provisions of the Local Government Act 1972 (hereinafter called "the Act"), namely:

- (1) Joape Rokosoi Matatolu, the then Mayor (first plaintiff)
- (2) Jone Banuve (second plaintiff)
- (3) Chandar Prakash Bidesi (third plaintiff)

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- (4) Harman Singh (fourth plaintiff)
- (5) Mohammed Ali Sahu Khan (fifth plaintiff)
- (6) Maan Singh (sixth plaintiff)
- (7) Tikendra Sen Sharma (seventh plaintiff)

B

- (8) Shiu Karan (eighth plaintiff)
- (9) Mohammed Yasin Khan (ninth plaintiff)
- (10) Matt Raj Mal (tenth plaintiff)

C

- (11) Raojibhai Khodabhai Patel (eleventh plaintiff)
- (12) Elizabeth Frances Allen
- (13) Salesi Savu

D

- (14) Etuate Viseinavanaua Tavai
- (15) Mohammed Muniff
- (16) Pramodni Niranjani
- (17) Leonard Gray Usher

E

- (18) Peter Keith Seeto
- (19) Gopalbhai Patel
- (20) John Rounds

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On the 27th of January 1977 the Suva City Council passed a resolution which read: "That in view of the Auditors' Reports on Suva City Council financial matters by the Auditor-General of Fiji, the Government of Fiji should consider appointing a Commission of Enquiry on matters of Suva City Council's financial management, system of accounting and other matters relating to finance to be looked into."

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On the 23rd February 1977 the Town Clerk of the Suva City Council wrote to the Permanent Secretary, Ministry of Urban Development, Housing and Social Welfare informing him of the motion and asking for appropriate action to be taken.

On the 17th June 1977 the Minister for Urban Development, Housing and Social Welfare (the second defendant, hereinafter called "the Minister") appointed one Paul Peters and one James Wiseman Linn as inspectors, and published the following Order in the *Fiji Royal Gazette*: A

"LOCAL GOVERNMENT ACT, 1972
(No. 4 of 1972)

SUVA CITY COUNCIL

APPOINTMENT OF GOVERNMENT OFFICER
AS INSPECTOR

"IN exercise of the powers conferred upon me by section 128 of the Local Government Act, 1972, I hereby order that: C

MR PAUL PETERS, Senior Accountant, Ministry of Finance; and

MR JAMES WISEMAN LINN, Temporary Accountant, Ministry of Finance

be appointed, with effect from 20th June 1977, as inspectors with all of the powers specified in the said section 128 for the purpose of examining and reporting upon the following aspects of the administration of Suva City Council: D

- (a) the Council's system of accounting;
- (b) the Council's management and control of finances; E
- (c) any other matters related to the finances of the Council which in the judgment of the inspectors call for special notice.

Dated at Suva this 17th day of June 1977.

Minister for Urban Development,
Housing and Social Welfare " F

On the 18th July 1977 under the powers conferred by section 123 of the Act the Minister made regulations entitled the Local Government (Inquiries) Regulations 1977 in the following terms:

"IN exercise of the powers conferred upon me by section 123 of the Local Government Act, 1972, I have made the following Regulations:— G

1.—(1) These Regulations may be cited as the Local Government (Inquiries) Regulations 1977.

(2) These Regulations shall apply to any inquiry instituted by the Minister in the exercise of his powers under section 130 or section 131 of the Act.

2. In these Regulations, unless the context otherwise requires— H

"committee" means a committee of inquiry established under the provisions of regulation 3;

"Secretary" means the Secretary to a committee.

A 3.—(1) For the purposes of an inquiry the Minister may appoint a committee which shall consist of not less than two but not more than five members, one of whom shall be nominated by the Minister as chairman.

(2) The Minister may appoint a suitable person to be the Secretary to a committee.

B (3) Subject to the provisions of these Regulations a committee may regulate its own procedure.

4.—(1) A council which is the subject of an inquiry shall be entitled to be heard at the inquiry and for that purpose may be heard at the inquiry and for that purpose may be represented by any member or officer of the council or by a barrister and solicitor.

C (2) If witnesses are examined by the committee they may be cross-examined on behalf of the council.

(3) No documentary evidence shall be used against a council at an inquiry unless it has been previously supplied with a copy thereof or given access thereto.

D 5.—(1) An inquiry by a committee may be held either in public or in camera as the committee considers necessary or desirable in the public interest and to ensure the proper discharge of its functions under these Regulations.

(2) If any person who is to give evidence at any such inquiry held in public so requests at the inquiry or by a notice in writing served on the Secretary before the date of the inquiry, the public shall be excluded from the inquiry while that person gives his evidence.

E 6. Any report, statement or other communication or record of any meeting, inquiry or proceedings which a committee may make in exercise of its functions or any member may make in performance of his duties, shall be privileged in that its production may not be compelled in any legal proceedings unless the chairman of the committee certifies that such production is not against the public interest.

F 7. No member of a committee shall be liable to any action or suit for any act done or omitted to be done in the bona fide execution of his duties under these Regulations.

G 8. For the purposes of carrying out its powers, duties and functions under these Regulations a committee shall have the same powers and authority to summon witnesses and to admit and receive evidence as are conferred on the commissioners of a Commission of Inquiry by section 9 of the Commissions of Inquiry Act and the provisions of section 14 and 17 of that Act shall apply mutatis mutandis in relation to the powers and authority vested in a committee under this regulation.

H 9. Any person who directly or indirectly, other than in the course of his duty, by himself or by any other person in any manner whatsoever attempts to influence a committee in the proper exercise of its functions or duties shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred dollars, or to imprisonment for a period not exceeding three months or to both such fine and imprisonment.

10. Any person who in connection with the exercise by a committee of its functions or duties wilfully gives to a committee any information which he knows to be false or does not believe to be true, or which he knows to be false by reason of the omission of any material particular, shall be guilty of an offence and on conviction shall be liable to a fine not exceeding two hundred dollars or to imprisonment for a period not exceeding six months or to both such fine and imprisonment. A

11. For the purpose of regulations 9 and 10 the term "committee" shall include a committee, any member of a committee, the Secretary or any person or body of persons appointed to assist a committee in the exercise of its functions or duties. B

12.—(1) No member of a committee, nor the Secretary nor any other person shall, without the written permission of the Minister, publish or disclose to any person otherwise than in exercise of his official functions the contents of any document, communication or information whatsoever relating to or connected with the functions of a committee which has come to his knowledge in the course of his duties. C

(2) Any person who knowingly acts in contravention of the provisions of this regulation shall be guilty of an offence and on conviction shall be liable to a fine not exceeding two hundred dollars, or to imprisonment for a period not exceeding six months or to both such fine and imprisonment. D

13. As soon as practicable after the conclusion of an inquiry, a committee shall submit a written report of its findings to the Minister.

On the 28th July 1977 the inspectors submitted their report to the Minister, without having given any of the plaintiffs a hearing or any opportunity of commenting upon their report. The report with its appendices ran into sixty pages and the inspectors' conclusions were summarised as follows (at paragraph 144): E

- "(a) there have been little or no improvements in the system of accounting following the letter dated 27th October 1976, from the Auditor-General;
- (b) there is no manual of instructions in respect of the system of accounting, costing or stock control and accordingly staff are often not aware of their functions and responsibilities; F
- (c) in several areas the system of accounting is inadequate for an organisation of the size of the Council. In other cases the existing system is not adhered to either because the staff are not aware of the system or they are not capable of carrying out their functions and responsibilities correctly;
- (d) the system of preparing annual estimates of income and expenditure is inadequate and contains fundamental accounting defects; G
- (e) the estimates of income have been inflated by including non cash and capital items;
- (f) annual budgets are not supported by cash flow statements showing monthly movements of capital and revenue and this must be rectified; H
- (g) the standard of estimating for capital works projects is low and the control of costs on these projects is negligible;

- A (h) the inefficient management of the Council funds has resulted in the current liquidity crisis;
- (i) loans raised for capital works projects have been utilised in payment of recurrent expenditure;
- (j) the standard of information supplied to the finance committee is totally inadequate for them to assess the finances of the Council;
- B (k) the administration of the Council is affected by over-staffing and almost uniform lack of discipline;
- (l) the authority of the officers of the Council has been undermined by the intervention by councillors in administrative matters and accordingly efficient and responsible management has been made almost impossible;
- C (m) the proceedings at full Council meetings are normally lengthy and extremely complex in that it is almost impossible to understand all the various motions discussed;
- (n) practice has proved that it is fundamentally incorrect for the Council to be involved in the recruitment and management of staff;
- D (o) in many cases councillors appear to be discussing and getting involved in matters with which they are not capable of dealing;
- (p) the specific matters investigated reveal areas of inefficient financial management."

On the 3rd August 1977 the Minister under the powers conferred by section 131 of the Act appointed a committee of inquiry to investigate the affairs of the Suva City Council and to report to the Minister as to whether:

- E (a) the revenues of the Council were being used in the best interests of the municipality as a whole;
- (b) the administration of the Council was wasteful, inefficient or corrupt.
- (c) the Council had failed to act in conformity with any of the provisions of the Local Government Act.

F On the same date the Minister sent to the Town Clerk of the Suva City Council a letter in the following terms:

G "As you are aware, I have now received the report of the Government officers appointed by me under section 128 of the Local Government Act, 1972 to inquire into certain aspects of the City Council's financial affairs.

After careful consideration of that report, I am satisfied that, in the public interest, a full inquiry into the Council's affairs should be instituted in terms of section 131 of the Act.

H Accordingly, in exercise of the powers conferred upon me by regulation 3 of the Local Government (Inquiries) Regulations, 1977, I have appointed a committee of inquiry. I enclose for your information a copy of the Gazette Notice which I have signed today, intimating the appointment of the committee and setting out its terms of reference. This Notice will appear in the local press and in the Gazette of Friday 5th August, 1977.

I have no doubt that the report by the Government officers will form an important part of the inquiry and I therefore enclose 30 copies of that report for perusal by the Council. I wish to make it quite clear that the report is sent to you *under confidential cover* which I trust will be respected. *I should be grateful if you would emphasise this point to the members of the Council, since premature disclosure of the contents of the report would, in my view, be contrary to the interests of both the Council and the committee of inquiry.* A

The Secretary to the committee will, in the course of the next few days, advise you officially of the date upon which the committee will commence its inquiry." B

Upon receipt of the letter on the same day the Acting Town Clerk immediately supplied all the councillors with a copy of the report.

On the 15th August 1977 the secretary to the committee of inquiry wrote to the Acting Town Clerk informing him that the inquiry would commence on the 29th August at a stated venue and time, that it would be held in public as far as possible, and that a counsel to assist the committee had been appointed. C

Between 16th and 18th August 1977 information relating to the holding of the inquiry was published by the two daily newspapers of Fiji and broadcast over Radio Fiji.

On the 26th August 1977 the secretary to the committee caused to have published in the two daily newspapers of Fiji notices in the following terms: D

LOCAL GOVERNMENT ACT (No. 4 of 1972)

SUVA CITY COUNCIL COMMITTEE OF INQUIRY E

Notice is hereby given that the Committee of Inquiry appointed to investigate the affairs of Suva City Council will commence its sitting on Monday, 29th August, at 9.30 a.m. in the Masonic Hall, Gladstone Road, Suva.

The Committee's terms of reference require it to investigate and report to the Minister whether in the Committee's opinion:— F

- (a) The revenues of the Council are being used in the best interests of the municipality as a whole;
- (b) The administration of the Council is wasteful, inefficient or corrupt; or
- (c) The Council has failed to act in conformity with any of the provisions of the act. G

Where possible the Inquiry will be held in public but it should be understood the Committee may in the public interest determine that certain evidence will be heard in private. Further, if so requested by any witness, the Committee is required in terms of the Local Government (Inquiries) Regulations, 1977 to hear the evidence of that witness in private. The Committee has received a number of approaches from associations and private individuals seeking to make submissions at the Inquiry. Every effort will be made to hear these submissions but it must be understood that the submissions will require to fall within the Committee's terms of reference which have been set out above. H

- A Finally the Committee wishes it to be clearly understood that the Inquiry is into the broad aspects of the affairs of the City Council and not into the conduct of any individual member or employee of the Council nor any particular issue with which the Council has been concerned."

The inquiry opened on the 29th August 1977 with the following statement by the chairman:

- B "Before opening the proceedings of this committee of inquiry, I think it is important both in the interest of the public as a whole and also in the interest of any person who may participate in the inquiry that I clarify the role and position of the committee and the scope of the inquiry.

- C I think it is most important, first of all, to stress that this is not a court of law—it is a committee. In a brief press release last week, the terms of reference of this committee were set out. I would like to read it once again so that it is clear to everybody as to what the terms of reference are.

- D This committee has been appointed by the Minister for Urban Development to inquire into the affairs of the Suva City Council and to report to him whether in the opinion of this committee "the revenues of the Council are being used in the best interest of the municipality as a whole; secondly, the administration of the Council is wasteful, inefficient or corrupt; or thirdly, the Council has failed to act in conformity with any of the provisions of the Act"

One of the first and most important things that I must stress is that the committee is asked to express an opinion and not to arrive at any judgment. Any decision as to further action rests solely with the Minister.

- E The council whose activities the committee is asked to examine is the Suva City Council and this includes both the elected councillors and the officers of the Council. We have come to the conclusion that we must concentrate first on the existing Council, and although it may be necessary to seek clarification about activities of the previous elected councils, the inquiry of this nature will have to confine itself to the immediate past.

- F Certain areas of criticism of the Council's activities have been aired in the press. Obviously these aspects will have to form part of the committee's activities and indeed it is our view that it is in the interest of the public and the Council that these matters should be inquired into, if only, to clear the air.

- G However, these will not be the only aspects covered by the committee of inquiry. We propose to adhere strictly to the terms of reference and while the committee will welcome suggestions and information from interested parties and organisations, it will be rigorous in ensuring that time is not given to matters which fall outside the terms of reference of the committee. It is important that I should stress the fact that although certain people have received subpoena notices to attend the committee of inquiry, this in no way indicates that those persons would not have attended voluntarily. The notices have been issued merely to ensure that the inquiry can be conducted in accordance with the principles of natural justice and that all persons whom

- H we consider may be able to assist the committee can do so.

It is also necessary for me to clarify the position of the legal officer who has been appointed to assist the committee. Mr Flower has been appointed to assist as the legal counsel to the committee. He is not a prosecutor. He is here to assist witnesses in the submission of their evidence to the committee in an orderly fashion. He is also here to give legal advice on points of law. A

It is accepted that the Council may wish to be represented and has a right to be represented by legal counsel. Other persons who may be presenting evidence may also wish to appoint a person to represent them at the inquiry. However, as I stressed earlier, this is not a court. And while I would not wish to restrict the right of counsel or representatives to ask questions of people called to assist the committee in the inquiry, it should be understood that the committee is not bound by the general rules of evidence. B

We have stressed in a press release that people who wish to give evidence in private or in camera are allowed to do so. They have a right to ask to be heard in camera. Witnesses will, however, only be entitled to expenses for the day on which they are summoned and required to give evidence. C

With those brief introductory words, I now call the first witness."

This statement was made in the presence of, inter alia, the Town Clerk, although the plaintiffs were not present at that time. D

The inquiry continued for twelve days and thirty six witnesses gave evidence. The first witness called was Mr Linn for the purpose of producing the inspectors' report. Among the other witnesses were the following, all of whom had been summoned to give evidence and did so:

- (1) Joape Rokosoi Matatolu (first plaintiff) E
- (2) Jone Banuve (second plaintiff)
- (3) Chandar Prakash Bidesi (third plaintiff)
- (4) Harnam Singh (fourth plaintiff)
- (5) Mohammed Ali Sahu Khan (fifth plaintiff)
- (6) Mohammed Yasin Khan (nine plaintiff) F
- (7) Raojibhai Khodabhai Patel (eleventh plaintiff)
- (8) Salesi Savu (Councillor)
- (9) Etuate Viseinavanaua Tavai (Councillor)
- (10) Leonard Gray Usher (Councillor)
- (11) John Rounds (Councillor) G
- (12) The Town Clerk
- (13) The Deputy Town Clerk and some time Acting
Town Clerk
- (14) The City Solicitor H
- (15) The City Engineer

- (16) The City Treasurer
- A (17) The Chief Electrical Engineer
- (18) The Personnel Officer
- (19) The Medical Officer for Health

B Included in those summoned who gave evidence were all the chairman of the Suva City Council Standing Committees.

Maan Singh (sixth plaintiff) was also summoned to give evidence but refused to do so, apparently with no adverse consequences other than a comment by the committee in its ultimate report (at paragraph 89) that it was anxious to afford the sixth plaintiff the opportunity to rebut certain imputations and that it was unfortunate that he did not avail himself of the opportunity as it left the matter in doubt.

C Tikendra Sen Sharma (seventh plaintiff) who had made written submissions to the committee of inquiry on which he was examined, gave evidence in which he was highly critical of certain councillors and alleged grave improprieties in the conduct of the Council's affairs. At the close of his examination the following exchange took place:

D

"Chairman: Thank you very much, Mr Sharma.

Mr Sharma: Sir, but the accountant, Mr Linn is not here. I wanted to ask him so many questions.

Chairman: No, as far as we are concerned, you have been formally discharged.

E Mr Sharma: Can I give another submission about many other accounts?

Chairman: What sort of submission?

Mr Sharma: Some accounts of the City Council, because I would have liked to discuss this with Mr Linn and he is not here. Otherwise I would hand this over to the police for that matter.

Chairman: Thank you.

F Mr Flower: I was merely going to say, Mr Sharma, that the only thing that the committee can consider are matters which fall within the terms of reference, and unless you have anything that had direct bearing on that, you are not in a position to submit anything further, and Mr Linn having given evidence has been formally discharged. No councillor has any further right to question Mr Linn on matters put before the committee from his evidence.

G Mr Sharma: But this is his report and who is answerable for it?

Chairman: We have got our own separate terms of reference.

Mr Sharma: Thank you."

On the 11th October 1977, in a forty page report to the Minister, the committee of inquiry found evidence that:

- H (a) the revenues of the Council were not being used in the best interests of the municipality as a whole;
- (b) the administration of the Council was wasteful and inefficient;

(c) the Council had failed to act in conformity with some of the provisions of the Act. A

On the 20th October all the councillors were supplied with copies of the report.

On the 26th October after considering the report the Minister under the powers conferred by section 131 of the Act dissolved the Suva City Council with effect from the 28th October 1977 and appointed three persons (the fourth, fifth and sixth defendants) to be administrators of the municipality for a period of twelve months. B

On the same date the Minister under the powers conferred by section 123 of the Act made regulations entitled the Local Government (Administrators) Regulations 1977.

On the 27th October 1977 the Minister made the following statement to the councillors: C

"Your Worship the Mayor, Councillors

Let me say first of all that I appreciate very much the way you have responded to my request, made at a very short notice, for you to come and meet with me this afternoon. D

I made this request because exactly a week ago you were all given copies of the report of the committee of inquiry into the affairs of the Suva City Council. This was after the Government had considered the report and decided that it should be released for publication.

The committee of inquiry, you will remember, was appointed under the provisions of the Local Government Act, specifically to report after due inquiry, whether in its opinion— E

- (a) the revenue of the Council was being used in the best interests of the municipality as a whole;
- (b) the administration of the Council was wasteful, inefficient or corrupt; and
- (c) the Council had failed to act in conformity with any provisions of the Act. F

In all three matters the committee, having considered the evidence before it, expressed its opinion affirmatively. The details of the committee's findings are all in the report which, by now, I am sure you will all have read. G

" That leaves me then, as the Minister responsible, to decide what action to take. The courses open to me are also set out in the Act, but I have also considered whether there are any other courses that might be resorted to. In weighing all these I have had to bear in mind, as a paramount consideration, the interests of the City of Suva and its ratepayers. I have also had to consult my Ministerial colleagues. I can assure you that the decision I have come to has not been lightly. It has been taken in the path of duty from which one should never deviate without valid and cogent reasons. My reason for inviting you here this afternoon, then, is to tell you personally, as a body, of the decision I have arrived H

A at and the actions which have been taken to give effect to it. It would have been easier perhaps simply to announce the decision publicly; but I rejected that because I feel that, however unpleasant it is to me, I should personally convey the decision to you, as a duty and as a courtesy.

B The decision I have come to is for the Council to be dissolved as from tomorrow, the 28th October 1977. I have also from the same date appointed three persons to be administrators and as such they will have the full authority to exercise the powers and functions as vested in the Council by the Local Government Act or any other written law. The appointment of these three administrators will be for a period of 12 months so that the election which is due in November next year can still take place. The particular task of the administrators will be to reorganise the system to make it more efficient, especially in the areas of finance and administration where the committee of inquiry found serious shortcomings.

C I have mentioned the election due to be held next year and I should just like to make it clear that the fact that the Council is being dissolved will not debar any of you from seeking election again and I wish you well should any of you decide to face the electorate when the time comes.

D I would just like to thank you once again for responding so readily to my invitation to meet here this afternoon."

On the 28th October 1977 the administrators commenced their duties.

Those are the salient facts, on which the plaintiffs apply for:

E (1) A declaration that in appointing the inspectors under section 128 of the Act the Minister wrongly conferred powers upon the said inspectors which powers were ultra-vires the said section.

(2) A declaration that the setting up of the committee of inquiry by the Minister on the 3rd day of August 1977, by virtue of regulation 3 of the Local Government (Inquiries) Regulations 1977 is null and void.

F (3) A declaration that regulations 2, 3 and 4 of the Local Government (Administrators) Regulations 1977 are null and void as being ultra-vires the powers of the Minister.

(4) A declaration that the fourth, fifth and sixth defendants have no power, authority or privilege to act as a council in the place of the Suva City Council.

G (5) An injunction restraining the fourth, fifth and sixth defendants, their servants and/or agents, from acting as administrators of the Suva City Council.

(6) A declaration that in as much as the rules of natural justice were not followed in the Order made by the Minister dated the 26th day of October 1977

H (a) dissolving the Suva City Council and

(b) appointing the fourth, fifth and sixth defendants administrators of the municipality

the Order is null and void.

(7) A declaration that the Suva City Council is still the duly elected council (as constituted on the 25th day of October 1977) with all the powers and duties conferred upon it by the Act A

In essence, the plaintiffs' right to relief turns on whether or not the procedures leading up to and culminating in the dissolution of the Suva City Council denied justice to the plaintiffs.

A certain approach is required from all persons or tribunals entrusted with the making of decisions which impose a liability or affect the rights property of others. The approach required is one which conforms with our natural sense of justice. B

In the Courts of law, this approach is ensured by rigid procedures, which are by no means applicable elsewhere. As Lord Parmoor pointed out in *Local Government Board v. Arlidge* (1915) A.C. 120 at 140: C

"Where, however, the question of the propriety of procedure is raised in a hearing before some tribunal other than a Court of Law there is no obligation to adopt the regular forms of legal procedure. It is sufficient that the case has been heard in a judicial spirit and in accordance with the principles of substantial justice.

In determining whether the principles of substantial justice have been complied with in matters of procedure, regard must necessarily be had to the nature of the issue to be determined and the constitution of the tribunal." D

The procedures to be followed outside the Courts are, of necessity, flexible so as to meet the very varied circumstances that can arise and what constitutes conformity with, or a breach of, the rules of natural justice in one case, may have no bearing on another. The rules of natural justice are not an end in themselves, but means to an end, specifically that those responsible for coming to a decision have, in all the circumstances, acted fairly; and each case turns on its own facts. E

Consequently, while I have considered a number of authorities including those cited in the course of argument, I see little merit in incorporating all of them in this judgment and save for those specifically mentioned I have consigned them to an appendix. F

As to the powers conferred upon the inspectors, the point taken by learned counsel for the plaintiffs was that, instead of utilising section 4(1) of the Act, the Minister acted under section 128 and that the terms of reference of the inspectors were ultra vires the powers of the Minister under the latter section.

Section 4(1) of the Act reads: G

"4.—(1) There is hereby constituted a committee to be known as the Local Government Committee which shall carry out the functions and undertake the enquiries assigned or referred to it under the provisions of this Act."

Thus the inquiries which may be undertaken by the Local Government Committee are confined to those to which specific reference is made in the Act. Reference thereto may be found in sections 5, 6 and 7, relating to the constitution of new towns or districts, and to the alteration or extension of boundaries. The Act does not confer H

- A upon the Local Government Committee the right to inquire into the financial affairs of a council and has no application to the type of investigation undertaken by Messrs. Linn and Peters.

Section 128 of the Act reads:

"128. The Minister may appoint any officer of Government to be an inspector either by general or special order—

- B (a) to enter on and inspect any real property occupied or owned by a council or any institution under its control or management or any work in progress under its directions;
- (b) to call for any return, statement, account or report which he may think fit to require;
- C (c) to call for and inspect any extract from the proceedings of any council or from the proceedings of any committee on any council and any books or documents in the possession of or under the control of a council."

- D Learned counsel for the defendants submitted, inter alia, that paragraph (b) of section 128 entitles the Minister to call for a "report" from an inspector on any matter. Although section 128 is not felicitously drawn, in my opinion that is not what is meant. Paragraphs (a), (b) and (c) of section 128 confer no powers on the Minister. They simply confer powers on an inspector appointed by the Minister if the Minister sees fit to invest him with such powers.

- E It is apparent from the whole tenor of the Act that the Minister has general supervisory control over a council, particularly in regard to its financial affairs (e.g. sections 40, 43, 44, 46, 47, 48, 49, 51, 53, 57 and 132) and it is implicit that, so long as he acts in good faith, the Minister may at his discretion appoint an official to inspect and report to him on any aspect of a council's affairs on which the Minister requires information. To enable an inspector to properly carry out his task the Minister may invoke paragraphs (a), (b) and (c) of section 128, as the Minister did in this case.

- F Consequently, as I see it, when the Order of the Minister was published in the *Fiji Royal Gazette* conferring on the inspectors the powers specified in paragraphs (a), (b) and (c) of section 128, it was not incumbent on the Minister to publish, as he did, the matters which he required the inspectors to examine into and report upon. Section 128 has no bearing on an inspector's terms of reference, and the Order of the Minister published in the *Fiji Royal Gazette* conferred upon the inspectors only the powers to which paragraphs (a), (b), and (c) of section 128 refer, which powers are intra vires the section.

- G The inspectors, when examining into and reporting on the financial affairs of the Council were acting as a preliminary fact-finding body; and the sole purpose of their report, which consisted of a detailed analysis and criticism of the accounting system and financial procedures of the Council, was to enable the Minister to decide what further steps, if any, should be taken. The report was not made public, and contained no criticism of individual councillors; and in all the circumstances natural justice did not require the inspectors to give the plaintiffs a hearing or an opportunity of commenting on their report.
- H

Having considered the inspector's report, the Minister came to the conclusion that further steps were necessary and decided that an inquiry should be instituted under the provisions of section 131 of the Act which reads: A

"131. If, at any time it shall appear after due enquiry that the revenues of a council are not being properly used in the best interests of the municipality as a whole, or that the administration of the affairs of a council is wasteful, inefficient or corrupt or that the council has failed to act in conformity with the provisions of this Act, the Minister may, after such inquiry (at which inquiry the council shall be heard)— B

(a) reduce the amount of any grant payable to the council for the next succeeding financial year by such sum as he shall determine; or

(b) dissolve the council and by order name or appoint either—

(i) three or more people to form a council until such time as a new council can be elected under the provisions of this Act; or C

(ii) one or more persons to be an administrator or administrators of the municipality for such period as the Minister may consider necessary; or

(c) suspend elections to the council in which case all members of the council shall remain in office for such period as the Minister may determine and any casual vacancies occurring in the number of members of the council shall be filled by appointment by the Minister." D

I am in no doubt that, quite apart from statutory provision, what is known as the *audi alteram partem* rule applies to such an inquiry and that the Council had a right to be heard. E

That right is spelled out in generous terms by regulation 4 of the Local Government (Inquiries) Regulations 1977, but learned counsel for the plaintiffs submitted that these regulations are ultra-vires the powers of the Minister under section 123 of the Act, which provides that "...the Minister may make regulations for prescribing anything which may be prescribed under any of the provisions of this Act and for the better carrying out of the provisions thereof." F

In my view, the Local Government (Inquiries) Regulations, taken as a whole, fall squarely within the ambit of section 123 of the Act as they enable an inquiry under section 131 to be carried out better. In coming to this conclusion I have been guided by the approach of the High Court of Australia in *Morton v. Union Steamship Co. of New Zealand Ltd.* (1951) 83 C. L. R. 402 at 410: "Regulations may be adopted for the more effective administration of the provisions actually contained in the Act, but not regulations which vary or depart from the positive provisions made by the Act or regulations which go outside the field of operation which the Act marks out for itself. The ambit of the power must be ascertained by the character of the statute and the nature of the provisions it contains." There is nothing repugnant in the provisions of regulation 3, being the regulation in respect of which the plaintiffs seek a declaration and indeed, so long as the Minister is empowered to appoint persons for the purpose of carrying out the inquiry required by section 131 of the Act, as undoubtedly he is, the precise terms of regulation 3 are authorised by section 43 of the Interpretation Act 1967 which provides that: G H

A "43. Where by or under any written law power is given to any person or authority to appoint any board, commission, committee or similar body, it shall be lawful for such person or authority, as the case may be, unless a contrary intention appears, to appoint a chairman, a deputy chairman, a vice-chairman and a secretary of such board, commission, committee or similar body and to make rules governing the procedure of such board, commission, committee or similar body."

B During the course of argument, however, I was addressed also on some of the other regulations so I shall deal with the points raised.

So far as regulation 4 is concerned, I consider that the word "council" includes councillors, and that this regulation augments the principles of natural justice.

C As to regulation 8, this is what is known as "referential legislation". It is a common device to adopt in a statute the words of another by reference rather than repetition, and the same practice can be followed in the case of subsidiary legislation so long as what is adopted does not go outside the field of operation or conflict with the positive provisions of the Act. The incorporation of sections 9, 14 and 17 of the Commissions of Inquiry Act entitles the committee of inquiry, inter alia, to issue summonses to witnesses, to examine them on oath, and to pay witness' expenses; and if any person summoned to attend as a witness fails without reasonable cause so to do or refuses without reasonable cause to answer any questions put to him, he may be found guilty of an offence and upon conviction be liable to a fine of one hundred dollars or to imprisonment for a term of three months; provided that no person shall be bound to incriminate himself.

E The effect of regulations 8 and 10 is that councillors could be compelled to give truthful evidence, other than incriminating evidence; but this does not derogate from their right to be heard. If it was considered to be unreasonable in some respects that a person who has a right to present his case can be compelled to give evidence which may disclose improprieties on his part falling short of criminal offences, a view to which I do not subscribe having regard to the nature of the inquiry and the subject matter under consideration, nevertheless that in itself would not entitle the courts to interfere. As Lord Greene pointed out in *Carltona Ltd. v. Commissioners of Works* (1943) 2 All E. R. 560 at 564:

F "All that the court can do is to see that the power which it is claimed to exercise is one which falls within the four corners of the powers given by the legislature and to see that those powers are exercised in good faith. Apart from that, the courts have no power at all to inquire into the reasonableness, the policy, the sense, or any other aspect of the transaction."

G There are of course circumstances in which the purported exercise of a power is so utterly unreasonable as to be in excess of power, in which case it no longer falls within the four corners of the powers conferred and is ultra-vires (*Hall & Co. Ltd. v. Shoreham-By-Sea U. D. C.* (1964) 1 W. L. R. 240; *Mixnam's Properties Ltd. v. Chertsey U. D. C.* (1965) A. C. 735). However that is not so here.

H As to the penalty provisions of the regulations, statutory authority for same is conferred by section 25 of the Interpretation Act 1967.

Passing reference was made to regulation 6, but as its provisions were wholly disregarded by the defendants in this action I see no reason to rule on its validity. Such

a ruling would become necessary only if, and when, any attempt was made by virtue of it to oust the jurisdiction of the court.

The final point taken by learned counsel for the plaintiffs as to the manner in which the inquiry was conducted was that the seventh plaintiff was denied natural justice by not being permitted to have Mr. Linn recalled for the purpose of asking him questions.

Had the committee confined itself to treating Mr. Linn as a formal witness called only to produce the inspectors' report, and had he not been "examined" by the committee, I do not think that any of the plaintiffs would have had the right to ask him questions. But it is clear from the introduction to the committee's report (paragraph 9) that Mr. Linn was examined on certain aspects of the inspectors' report and consequently, by virtue of regulation 4(2) of the Local Government (Inquiries) Regulations, the plaintiffs were entitled to cross-examine him.

However there is nothing before me to indicate that, at the time when Mr. Linn was called, any of the plaintiffs was denied the right to cross-examine him. The plaintiffs, even though not present when the chairman of the committee of inquiry made his opening statement, must be taken to have been aware of the law, including regulation 4 of the Local Government (Inquiries) Regulations; and so long as the seventh plaintiff, who had been supplied with a copy of the inspectors' report twenty six days before the hearing, was not actively prevented from questioning Mr. Linn at the time he was examined, no right was conferred on the seventh plaintiff either by natural justice or by the regulations to require Mr. Linn to be recalled. Counsel for the committee of inquiry stated the matter correctly when he told the seventh plaintiff: "Mr. Linn having given evidence has been formally discharged. No councillor has any *further* right to question Mr. Linn on matters put before the committee from his evidence."

The next matter for consideration is whether, as learned counsel for the plaintiffs contended, the Minister ought to have given the councillors the opportunity to be heard after he had received the report of the committee of inquiry and before deciding which, if any, of the alternative courses of action to take under paragraphs (a), (b) or (c) of section 131 of the Act.

In setting up a committee of inquiry before which the Suva City Council including the councillors had the right to be heard, and in giving full consideration to its report before making his decision, the Minister was acting justly as he was obliged to do, and nothing more of him was required. Being satisfied, as I am, that the inquiry was properly conducted, that the Suva City Council and the councillors, including the plaintiffs, were given a fair opportunity of being heard; and there being no suggestion that the Minister did not give genuine consideration to the comprehensive report of the committee of inquiry, copies of which were made available to the councillors, there can be no question of the councillors being entitled to a further hearing before the Minister made his decision.

As to the Local Government (Administrators) Regulations 1977, at the hearing learned counsel for the plaintiffs conceded that by virtue of section 42 of the Interpretation Act 1967 the Minister had power to make them. I doubt whether that concession was intended to extend to each and every regulation, particularly regulation 3; but be that as it may, I do not consider it necessary or desirable to determine their validity. These regulations have no bearing on the issue of whether or not the

A Suva City Council was properly dissolved and I am not satisfied that the plaintiffs, in the capacity in which they are parties to this action, have locus standi to obtain the declaration sought in respect thereof.

It appears to me that from beginning to end the plaintiffs were treated fairly, and the mode of procedure adopted did not fall short of the requirements of natural justice.

B I am, therefore, of opinion that the Court should not make the declarations and orders sought and that the action be dismissed with costs.

Action dismissed.