

BANDARA AND OTHERS

v.

**JAGODA ARACHCHI, OFFICER IN CHARGE, POLICE STATION,
FORT AND OTHERS**

SUPREME COURT

S. N. SILVA, C. J.

BANDARANAYAKE, J. AND

ISMAIL, J.

S. C. APPLICATION Nos. 687/97, 688/97,

689/97 AND 690/97.

09TH FEBRUARY, 2000.

Fundamental rights - Dispersal of persons engaged in a picketing campaign - Freedom of expression and peaceful assembly - Articles 14(1)(a) and (b) of the Constitution - Permitted restrictions - Article 15(7) - Disturbance of the public peace - Sections 95(1) and 95(2) of the Code of Criminal Procedure Act.

Four petitioners who were University students and other University students organised a picketing campaign to protest against the educational reforms proposed by the Government. At about noon on 30.07.1997 there were over 3000 persons assembled outside the Fort Railway Station. They were displaying placards against the proposed educational reforms. At that time the Police Officers were also present. When private buses halted on the road opposite the demonstrators, to pick up passengers, the public view of the placards was obstructed. The demonstrators had then run on to the road and pelted stones causing damage to shops and injuries to Police Officers. At that stage on the instructions given by a Superintendent of Police who was also present, the Police party used tear gas batons and dispersed the protestors.

Held :

The Police acted in terms of their powers under sections 95(1) and 95(2) of the Code of Criminal Procedure Code Act to prevent a breach of the peace. There was no infringement of the rights of the petitioners guaranteed by Articles 14(1)(a) and (b) of the Constitution, namely, the freedom of expression and peaceful assembly. Those rights are not absolute but subject inter alia, to such restrictions as may be prescribed

by law in the interest of public order as provided by Article 15(7) of the Constitution.

Case referred to :

Bernard Soysa v. The Attorney - General (1991) 2 SRI L. R. 56.

APPLICATION for relief for infringement of fundamental rights.

D. W. Abeykoon, P. C. with W. G. Deen and Ms. Chandrika Morawaka for petitioners.

Shavindra Fernando, S. S. C. with Harsha Fernando, S. C. for respondents.

Cur. adv. vult.

May 16, 2000

S. N. SILVA, C. J.

These applications have been filed by four university students in respect of the action taken by the Police pursuant to a picketing campaign organised by the Petitioners and other university students. They have been granted leave to proceed on the alleged infringements of their freedom of speech and expression and the freedom of peaceful assembly, guaranteed by Article 14(1)(a) and (b), respectively of the Constitution.

The Inter University Students Federation (IUSF) which according to the Petitioners consisted of representatives of the Students Councils of the Universities of Peradeniya, Kandy, Sri Jayawardenapura, Katubedde and Ruhuna, at a meeting held on 23.7.97, decided to engage in a picketing campaign in front of the Fort Railway Station scheduled for 30.7.97, commencing at 11.00 a.m. The campaign was organised as a protest against the educational reforms that were proposed by the Government. A copy of the minutes of the meeting of the IUSF reflecting the decision to organise the campaign has been produced marked P7. Learned President's Counsel appearing for the Petitioners conceded in the course of his submissions that the proposed educational reforms do not pertain to the

Universities and they relate only to the content of studies in schools. However, he submitted that the University students have a legitimate interest in the education that is imparted to the students in schools and the basis of their admission to the Universities. In this context we have to take note of a historic tendency on the part of the University students to activate universally and be involved in matters that they perceive as being of general and public importance, without restricting their endeavours to their welfare and future. Further, the freedoms of speech and expression guaranteed by Article 14(1)(a) of the Constitution are not restricted to matters of immediate concern to a person who avails of these freedoms. Hence, I would proceed to an examination of the matters in issue on the premise that the decision of the IUSF to picket in front of the Fort Railway Station in order to protest against the proposed educational reforms was made bona fide in a process that involved the exercise of the freedoms of peaceful assembly, speech and expression guaranteed by Article 14(1)(b) and (a) of the Constitution.

It is common ground that pursuant to the decision of the IUSF referred to above, a large number of persons assembled outside the Fort Railway Station at about noon on 30.7.97. The Petitioners state that there were over 3000 persons and the Police estimate is higher. The persons who assembled were displaying placards against the proposed educational reforms.

It is common ground that initially these persons assembled in front of the Fort Railway Station and they occupied the paved area without obstructing the Olcott Mawatha being the busy road which runs in front of the station. Subsequent to this point there is a divergence in the versions of the Petitioners and the Police. The Petitioners claim that the Police who were present in fair strength got buses parked on the road in front of the paved area where they were picketing in order to prevent the public from reading the placards that were being exhibited by the protesters. The version of the Police is that the protesters were gathered just by the place at which buses that come from

the Pettah bus stand stop to pick up the passengers. That the buses stopped in the normal course to pick up passengers and in that busy hour there was no endeavour on the part of the Police to deliberately stop the buses at the regular bus halt.

Olcott Mawatha is one of the busiest roads in Colombo Central and considering the proximity of the Central Bus Stand, Pettah, to the place in question, in the normal course several buses would have stopped to pick up passengers near about the place where the protesters were assembled. The Police would not have had advance information as to the movements of the protesters to pre arrange with bus drivers to park their buses at this point. They certainly could not have intervened on the spur of the moment to compel drivers to park their buses laden with passengers at this point merely to prevent people from reading what was written on the placards. Hence I have no difficulty in accepting the version of the Police on this point.

The Petitioners admit that when the buses stopped in front of the paved area where they were assembled, the protesters went onto the main road. This coincides with the version of the Police that at a certain point the protesters invaded the main road. This action on the part of the protesters would invariably have caused severe congestion in the heavy traffic at this busy hour.

It is common ground that the Police action in dispersing the protesters commenced after the they came on to the main road.

The Petitioners allege that at this stage the Police attacked those who were picketing. Tear gas and a water cannon were used and there was an attack with batons and also firing with rubber bullets. Some of the protesters including one of the Petitioners were beaten by the Police with batons. At this stage the protesters ran in different directions.

The version of the Police is different. When the protesters invaded the road, they were ordered to disperse. When the order to disperse was not obeyed the water cannon was used. The Police state that the machine used for this purpose went out of order and the protesters who were infuriated went on a rampage by attacking the Police and also nearby business premises. At that stage W. A. Don Gamini, the Superintendent of Police, (being the most senior officer present), gave instructions to the Police party to use tear gas and finally to baton charge the protesters who were obstructing the main road and causing damage to nearby business establishments. It is alleged that the protesters pelted stones causing damage to vehicles and shops and caused injuries to the Police officers. In support of this assertion the 1st Respondent who had been assigned the task of taking precautionary measures in relation to the picketing campaign has produced in evidence the affidavits of two Police constables who were injured in the incident with Medico Legal Examination Reports as to the injuries suffered by them. He has also produced statements made to the Fort Police by five persons, who complain of damage caused to their business establishments by the protesters. These protesters have also filed affidavits in Court in support of their complaints. The Petitioners endeavour to explain the damage to the business establishments on the basis that it was caused by the Police when they used force to disperse the protesters. This version is completely contradicted by the affidavits and statements referred to above. The persons who operate these business establishments clearly state that their premises were invaded and damage was caused by the protesters.

In the circumstances I accept the version of the 1st Respondent and of the Superintendent of Police that the protesters at a certain point of time became unruly and defied the orders of the Police to disperse and not only obstructed the road but also, caused damage to vehicles and business establishments in the neighbouring area.

In the light of the aforesaid findings of fact I would now examine the allegation of the Petitioners that the Police infringed their fundamental rights of freedom of speech, expression and peaceful assembly.

The freedom of peaceful assembly and the freedoms of speech and expression, related to such an assembly are liberties vital to the functioning of a democratic society and every citizen is entitled to the exercise of these freedoms by virtue of Article 14(1)(a) and (b) of the Constitution. However they are not absolute freedoms and their exercise is subject to restrictions. The restrictions are implicit in the conferment of these freedoms in that what is guaranteed is the right of "peaceful assembly". Article 15(2), (3) and (7) provide that the exercise and operation of these freedoms may be subject to specific restrictions prescribed by law. What is relevant to the matters at issue is that Article 15(7) provides for restrictions to be imposed *inter alia* in the interest of public order. The rationale for such restrictions is common to most legal systems.

A. V. Dicey in his famous work titled "The Law of the Constitution" has traced the evolution of the "Right of Public Meetings." He has observed that "the right of assembly is nothing more than a result of the view taken by Courts as to individual liberty of person and individual liberty of speech." (10th Edition page 271). In explaining the limitations to the right of public meetings he has stated as follows:

"The principle, then, that a meeting otherwise in every respect lawful and peaceable is not rendered unlawful merely by the possible or probable misconduct of wrongdoers, who to prevent the meeting are determined to break the peace, is, it is submitted, well established, whence it follows that in general an otherwise lawful public meeting cannot be forbidden or broken up by the magistrates simply because the meeting may probably or naturally lead to a breach of the peace on the part of wrongdoers.

To the application of this principle there exist certain limitations or exceptions. They are grounded on the absolute necessity for preserving the Queen's peace.

First limitation - If there is anything unlawful in the conduct of the persons convening or addressing a meeting, and the illegality is of a kind which naturally provokes opponents to a breach of the peace, the speakers at and the members of the meeting may be held to cause the breach of the peace, and the meeting itself may thus become an unlawful meeting.

Second limitation - Where a public meeting though the object of the meeting and the conduct of the members thereof are strictly lawful, provokes a breach of the peace, and it is impossible to preserve or restore the peace by any other means than by dispersing the meeting, then magistrates, constables, and other persons in authority may call upon the meeting to disperse, and, if the meeting does not disperse, it becomes an unlawful assembly.

The limitations or restrictions which arise from the paramount necessity for preserving the Queen's peace are, whatever their extent, - and as to their exact extent some fair doubt exists, - in reality nothing else than restraints, which, for the sake of preserving the peace, are imposed upon the ordinary freedom of individuals."

The situation in the United States is similar and is fairly depicted in the observations of the Supreme Court in the case of *Hague, Mayor et al vs Committee for Industrial Organisation* 307 US 496 which reads as follows:

"The privilege of a citizen of the United States to use streets and parks for communication of views on national questions is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order, but it must not, in the guise of regulation, be abridged or denied."

The case of *Bernard Zoysa vs. the Attorney General*⁽¹⁾ decided by this Court also relates to an alleged infringement of the fundamental rights guaranteed by Article 14(1)(a) and (b) of the Constitution. The case relates to an instance where certain members of recognised political parties organised a picket and a "satyagraha" at the Maha Maluwa of the Dalada Maligawa in Kandy to protest against the rising cost of living, denial of democratic rights and certain other matters. The Court held inter alia that the impugned action of the Police in dispersing those who were gathered was necessary to ensure the maintenance of public order and was justified.

It has to be noted that the maintenance of peace and order is the ultimate objective of all legal systems. The freedom of peaceful assembly, speech and expression are also designed to promote peace and order. It, inter alia, assures the freedom to dissent. The process of decision making in public matters is hereby enriched. If dissent is suppressed there is every likelihood of it taking a devious form which may ultimately endanger peace and order. But, citizens who exercise this right should be ever mindful of the salutary limitation, that the Constitution assures to them only the freedom of 'peaceful assembly.' An assembly crosses the line of being peaceful when the general behaviour of those assembled leads to a reasonable apprehension that they are likely to cause a disturbance of the public peace. From that point onwards those assembled cease to exercise the fundamental freedom as laid down in Article 14(1)(b) of the Constitution. Section 95(1) of the Code of Criminal Procedure Act No. 15 of 1979 empowers a police officer not below the rank of Inspector of Police to command such an assembly to disperse. The section also provides that "it shall therefore be the duty of the members of such assembly to disperse accordingly." Section 95(2) further empowers the Police to use reasonable force to disperse an assembly of persons who do not comply with a command as stated above. Such action on the part of the Police would be lawful and cannot constitute an infringement of the freedom guaranteed by Article 14(1)(b) of the Constitution.

On the facts, as set out above, I hold that the Petitioners and others who assembled outside the Fort Railway Station at noon on 30.07.1997, at the commencement of their campaign of protest, acted in the lawful exercise of their fundamental rights of peaceful assembly as provided in Article 14(1)(b) of the Constitution. That, the placards carried by them and their protest against the proposed educational reforms constitute an exercise of their fundamental freedom of speech and expression. At this stage, the exercise of these freedoms, were not infringed by the 1st Respondent or any other Police officer present at the scene. I further hold that the assembly of persons including the Petitioners ceased to be peaceful when some of them came on to the road resulting in an obstruction of the traffic on the road. At that point the 1st Respondent acted lawfully within his powers as provided in Section 95(1) of the Code of Criminal Procedure Code Act No. 15 of 1979, when he commanded the assembly of persons including the Petitioners to disperse. The action thus taken to command the dispersal of the assembly and upon failure to do so, the use of force, to disperse the assembly of persons including the Petitioners is justified and do not constitute an infringement of their fundamental rights as alleged by the Petitioners.

The applications are accordingly dismissed. I make no order as to costs.

BANDARANAYAKE, J. - I agree

ISMAIL, J. - I agree

Application dismissed.