RAJAKARUNA AND OTHERS
v
UNIVERSITY OF RUHUNA AND OTHERS

COURT OF APPEAL.
TILAKAWARDANE, J. (P/CA).
WIJERATNE. J.,
CA 1316/2002.
JUNE 17, 2003.

Writ of Certiorari – Universities Act 16 of 1978, section 16 – Disciplinary inquiry – Postponement requested – Not granted – Violation of the Rules of Natural Justice? – Failure to observe rules of natural justice – Does it render a decision a nullity? – Circumstances?

The petitioners contend that at the time of the disciplinary inquiry which was to be held against the petitioners-students of the Medical Faculty, University of Ruhuna - they requested for further time to get ready, but was not given, but were issued with letters informing them that they were found guilty of the charges framed against them. The petitioners contend that they were denied a fair inquiry in violation of the rules of natural justice.

Held:

(1) The petitioners have failed to submit the written requests or any material to support their contention that they did ask for further time in writing from the Authorities.

(2) The requirements of natural justice must depend on the circumstances of the case, the nature of inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth.

(3) The petitioners' list of witnesses included all the students of the Medical Faculty of the University, O.I.C. Police Station, Poddala and all other superior officers, three wheel drivers near the University and doctors, nurses, journalists, chief priest of the temple -This list clearly indicates a desire to frustrate the purpose of the said inquiry.

(4) According to the facts and circumstances of this particular case, it is clear that the respondents have conducted the disciplinary inquiry in accordance with the University by-laws. Under section 10 (iv) such disciplinary inquiry should be conducted within two weeks.

Per Tilakawardane, J. (P/CA):

"When deciding whether there was a violation of rules of natural justice by the respondents it has to be emphasized that there are no strict standards and it depends on the circumstances of each case. Though in general courts have held that acádemic disciplinary proceedings require observance of principles of natural justice there are exceptions to this norm".

Per Tilakawardane, J. (P/CA):

"Discipline and rectitude are basic and intrinsic qualities that are the hallmarks of the medical profession, any breach of such discipline must be left to be dealt with in an appropriate manner by the institution itself which has a bounden duty to safeguard the public from indisciplined professionals. Therefore, a matter of discipline unless it is patently capricious would be a matter that is wholly within the purview and control of the University".

APPLICATION for a *Writ of Certiorari*

Cases referred to:-

1. *Lloyd* v *McMahon* 1987 – A1 625 at 702
2. *George* v *Secretary of State for the Environment* – 1979 77 LGR 689
3. *Hoffman-La Roche* v *Secretary of State for the Trade and Industry* – 1975 AC-295 at 320
4. *Durayappah* v *Fernando* 1967 – 2 AC 337-353

M.R. de Silva for petitioner.

Dr. Jayantha de Almeida Gunaratne for respondents.

July 30, 2003.

SHIRANEE TILAKAWARDANE, J., (P/CA)

The Petitioners have filed this application seeking a writ of 01
certiorari quashing the disciplinary orders dated 17.07.2002 marked "P8A to P8L", and also prayed for interim relief staying the operation of the disciplinary orders marked "P8A to P8L".

The Petitioners are admittedly students of the Medical Faculty, University of Ruhuna. The 1st respondent is the University of Ruhuna established under the Universities Act No. 16 of 1978.

In October 2001, the petitioners were informed by letters dated 04.10.2001 that disciplinary action will be taken against them

in respect of acts of grave indiscipline committed by the Petitioners on 13.09.2001, by assaulting certain female nurses who were following a fee-levying Special Course offered by the Ruhuna University.

The Petitioners were issued letters dated 09.10.2001 informing them that a preliminary investigation would be conducted on 16.10.2001. At the said investigation statements were recorded, and charge sheets were issued (marked P3A to P3L). By letter dated 06.12.2002 Petitioners were requested to attend a formal disciplinary inquiry which was to be held on 12.10.2002.

The Petitioners contend that at the said inquiry they requested for further time to get ready for the inquiry for which they were requested to make applications in writing. Though the Petitioners state that they made the said request for further time, in writing, the petitioners have failed to produce copies of the same papers to this court. The Petitioners further state that they were not informed of a further date but were issued letters dated 17.07.2002 informing them that they were found guilty of the charges framed against them (marked P8A to P8L).

The main issue that has to be decided is whether according to the present circumstances of the case the petitioners were denied a fair inquiry in violation of the rules of natural justice.

As to the question of whether the Petitioners were entitled to a legitimate expectation that their requests sought, for the postponement of the inquiry, would be granted, but the Petitioners have failed to submit those written requests nor any materials to support their contention that they acted in accord with the request made by them.

When deciding whether there was a violation of rules of natural justice by the Respondents it has to be emphasized that there are no strict standards and it depends on the circumstances of each case. Though in general courts have held that academic disciplinary proceedings require observance of principles of natural justice there are exceptions to this norm.

Wade 8th edition Administrative Law at page 493 states "the requirements of natural justice must depend on the circumstances

of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with, and so forth".

In *Lloyd* v *McMahon* [1] at 702 Lord Bridge stated that ".....the so called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness".

In the case of *George* v *Secretary of State for the Environment* [2] it was held that there must have been some real prejudice to the complainant and not a mere technical infringement of natural justice.

According to the present circumstances the Petitioners contend that if the disciplinary order stands that all the petitioners would miss their batch as they would not be able to follow practical, clinical tutorials and/or lectures. Further states:

1) 7th and 10th Petitioners will be deprived of sitting for the End Appointment Test, if they absent themselves for a period of over one to four weeks.
2) The approval of the results of the 8th and 9th Petitioners have been withheld for 3 months and therefore the Petitioners' appointments would be delayed.
3) The Petitioners would be deprived of any scholarships or bursaries given by the University including Mahapola scholarships.
4) The 11th Petitioner could not sit for his End Appointment Test in Pediatric due to the aforementioned suspension and would not be able to sit for the repeat examination which would be held in September.

Therefore the petitioners pray for the reliefs as their rights would be affected as stated above due to the disciplinary actions taken against them.

In this regard it is important to see the gravity of the charges framed against the Petitioners. These charges refers to –

1) Disobeying the faculty rule that students should not remain in the faculty premises beyond 9.00 p.m.

2) Disobeying the Vice-Chancellors orders making the medical faculty premises out of bounds from 4.00 p.m. on 14.09.2001 until 4.00 p.m. on 15.09.2001.

3) On the pretence of a satyagraha, crowding the main gate of the faculty from 6.45 a.m. of 15.09.2001.

4) Crowding the main gate and thereby obstructing the official duties of academic and non-academic staff and infringing on the professional rights of academic staff.

5) Conducting illegal meetings.

6) Conducting propaganda activities without due permission.

7) Attempting to obtain electricity from the faculty without permission.

8) Publicly abusing academic staff of the faculty.

9) Defaming academic staff in writing and in speech and speaking to them in a threatening manner.

10) Attempting to prevent the conduct of the diploma course in lactation management which had been approved by the Faculty Board, the Senate and the University Council.

12) Preventing a faculty academic staff member from attending to his officials duties and holding him by force.

The Respondent submits that the above referred disciplinary actions against the Petitioners were taken after a process of inquiry initiated by the 1st Respondent University. A preliminary investigation was conducted, which fact was conceded by both parties, consequent to which a *prima facie* case was found to lie against the Petitioners.

The Petitioners have failed to produce any documents to substantiate the fact that they requested a postponement of the inquiry. According to the University by-laws steps have to be taken to hold an inquiry within one week of the preliminary investigation. Under section 10 (iv) such disciplinary inquiry should be conducted within two weeks.

When perusing the answers of the Petitioners "P4A to P4L" it becomes clear that the number of witnesses that they intended to call on their behalf were impractical and would have prolonged the inquiry. The Petitioner's list of witnesses included, all the students of the Medical Faculty, Ruhuna University, O.I.C. Poddala Police Station and all the other respective officers, three wheel drivers near the University, all the doctors and nurses of the Teaching Hospital, Karapitiya, Chief Incumbent Thero of the Karapitiya Temple and the other theros and journalists who were present at the time. This list clearly indicates a desire to frustrate the purpose of the said inquiry.

The remedy Petitioners have sought is discretionary and a court has power to withhold such remedy if court thinks fit. According to the facts and circumstances of this particular case it is clear that the respondent conducted the disciplinary inquiry in accordance with the University by-laws.

Lord Denning M.R. in *Hoffman-La Roch* v *Secretary of State for Trade and Industry*[3] at 320 states "A failure to observe the rules of natural justice does not render a decision or order or report absolutely void in the sense that it is a nullity. The legal consequences are best told by recounting the remedies available in respect of it. A person who has been unfairly treated (by reason of the breach of natural justice) can go to the courts and ask for the decision or order or report, or whatever it is, to be quashed, or for a declaration that it is invalid, that it has not and never has had any effect as against him. But it is a personal remedy, personal to him. If he does not choose himself to query it and seek a remedy, no one else can do so; see *Durayappah* v *Fernando* [4] But it is within the discretion of the court whether to grant him such a remedy or not."

Further states that if the persons conduct had been disgraceful and in fact suffered no injustice, he may be refused relief.

Another important factor is that although the petitioners allege that their university career would be affected if relief was not granted, the respondent has submitted documents marked X1 and X2 to the effect that terms of punishment was mitigated after appeal made by the petitioners.

Therefore when the University of Ruhuna was reopened on 09.09.2002, only 1st, 2nd, 7th and 10th Petitioners remained affected although petitioners contended all Petitioners would miss their batch for not attending lectures.

Even the terms of punishment in force against these four petitioners, were suspended consequent to an unconditional apology made to the academic staff on 18.09.2002 by the petitioners. This decision was conveyed to the said four petitioners by document marked X3(a) to X3(d).

The Respondent further submits that the period during which disciplinary action was operative, has lapsed rending the application of the petitioners wholly academic in nature and futile.

As regards the other consequences they would follow regarding the future medical career of these students this court has carefully adopted all relevant material.

Considering the seriousness of the allegations leveled against the Petitioners which badly reflect on their future in the medical profession, and in considering the competing interests of the University authorities and the students in the case, one cannot be unmindful of the noble profession to which the Petitioners seek entry. Discipline and rectitude are basic and intrinsic qualities that are the hallmark of the medical profession. Any breach of such discipline must be left to be dealt with in an appropriate manner by the institute itself which has a bounden duty to safeguard the public from indisciplined professionals. Therefore a matter of discipline, unless it is patently capricious would be a matter that is wholly within the purview and control of the University.

This Court therefore finds that all disciplinary steps taken in this matter is within the purview of the Respondent University and finds that this is not a fit and proper matter to invoke the writ jurisdiction of this Court. The application is dismissed with costs in 190
a sum of Rs. 2500/-.

WIJEYARATNE, J. - I agree.

Application dismissed