

JAYAWARDANE
v
SENARATNE & OTHERS

COURT OF APPEAL
SRISKANDARAJAH, J.
CA 2366/2004
DC COLOMBO 7, 2006

Writ of Certiorari / Mandamus – Criminal Procedure Act 15 of 1978 – Section 108 – Coroner – Services terminated without any inquiry – Charge sheet not served – Audi Alteram partem principle – Applicability – Petitioner on extension.

At the inquest into the death of a school boy – the petitioner – city coroner – returned a verdict of suicide on the evidence before him. A show cause letter was received by him alleging that the petitioner failed to consider relevant materials sufficiently before coming to the said verdict. The petitioner replied the said letter, but his services were terminated without any inquiry.

It was contended that his services were summarily terminated without any inquiry and it is irrational, unfair, unreasonable, arbitrary and tainted with *mala fides*, for the reason that the show cause letter was solely based on the unfounded allegations of the deceased's mother – and that he was not served with a charge sheet and he was not given an opportunity to be heard.

Held:

- (1) There is no Rule governing the petitioner's appointment and the appointment, extensions and termination of service as an inquirer is in the discretion of the relevant Minister. The petitioner is in extension of his service and his extension was coming to an end in December 2004 and the petitioner's services were terminated in October 2004, two months before the date on which the petitioner's extension was coming to an end.
- (2) In view of the facts and circumstances of this case the petitioner cannot claim that a charge sheet should have been served on him and an inquiry should have been held. The explanation given was not accepted therefore the respondents terminated the services.

Per Sriskandarajah, J.

"The extent and the nature of hearing in relation to a termination of service depends on the circumstances of the case, the nature of the service, the rules under which the respondent is acting, the subject matter that is being dealt with"

- (3) In these circumstances, the petitioner cannot state that the rule of natural justice have been denied to him.

APPLICATION for a *Writ of Certiorari*.

Cases referred to:

- (1) *Russel v Norfolk* – 1 All ER 109 at 118
(2) *Premachandra v Jayawickrema* – 1994 – 2 Sri LR 90, 105
(3) *Bandara v Premachandra* – 1994 – 1 Sri LR 301-312
(4) *Tennekoon v De Silva* – 1997 1 Sri LR 16 (SC)
(5) *Jayawardane v Wijeyetilleke* – SC 186/95 – SCM 27.7.95

J.C. Weliamuna with *U. Wijesinghe* for petitioner.

L.M.K. Arulanandan DSG for respondents.

March 12, 2007

SRISKANDARAJAH, J.

The petitioner was serving as a City Coroner in the Gampaha District during the relevant period. He was appointed as the City Coroner of Gampaha District by the letter of appointment dated 23.11.1990 issued by the Secretary to the Ministry of Justice. This appointment was with effect from 1.12.1990 for a period of 3 years. This appointment was extended time to time up to 18.12.2004. The petitioner submitted that on or about 24.6.2004, he conducted an inquest into the death of a school boy who met with a train accident. At the inquiry the petitioner recorded the mother's evidence and her brother's evidence. The petitioner further submitted that both the mother and her brother have stated that they do not suspect any foul play and that they too suspect that the boy had committed suicide by jumping into the wheels of a train. In the Inquest report the petitioner returned a verdict of suicide on the evidence before him. The petitioner submitted that he received a show cause letter dated 25.08.2004, alleging that the petitioner failed to consider

relevant materials sufficiently before coming to the said verdict (P6). The petitioner replied the said letter by his letter of 3.9.2004 (P7). The petitioner contended that his services were summarily terminated by the 1st respondent by his letter dated 8.10.2004 without any inquiry (P8), and it is irrational, unfair, unreasonable, arbitrary and tainted with *mala fides* for the reason that the show cause letter was solely based on the unfounded allegations of the deceased's mother, he was not served with a charge sheet and he was not given an opportunity to be heard. 20

The petitioner in this application is seeking a *writ of certiorari to quash* the decision contained in P8 and a *writ of mandamus* directing the 1st to 3rd respondents to extend his service upto the age of 70 years as per Ministry of Justice Circular No. 15/94 dated 21.6.2004. 30

The respondent contended that the mother of the deceased boy by her affidavit and the letter dated 14.07.2004 requested the Secretary Ministry of Justice to have another Inquiry as she is suspecting foul play. She also complained by her letter dated 7.8.2004 that the petitioner has recorded matters not stated by her in her statement at the inquest and the contents was not explained to her. She gave a detail statement to Sri Lanka Police Headquarters Colombo 1 on 27.04.2004 suspecting foul play and complained that the petitioner has not conducted the inquest in terms of the requirements of law (X2). The complaint of the deceased boy's mother with her affidavit was forwarded to the Gampaha Magistrate. The 1st respondent submitted that the perusal of the inquest proceedings in M.C. Gampaha Case No. 38136 does not reveal an *iota* of evidence to indicate that the boy came about his death by committing suicide. The learned Magistrate in his Order dated 01.11.2004 (P9) has come to the finding that the petitioner has not duly performed his duties as an inquirer. He has observed the following lapses in the inquiry: that the petitioner has not visited the scene, he has not ascertained the identity of the person who brought the body of the deceased to the mortuary. The evidence of the doctor is to the effect that the injuries would have been caused as a result of train accident or the boy being pushed on to ongoing train. The 1st respondent further contended that the petitioner as an inquirer was not entitled in law 40 50

to investigate the crime, and the petitioner as inquirer had only to record the cause of death. The petitioner's verdict of suicide is not supported by evidence and has impeded the progress of investigation on the part of the Police and has resulted in a miscarriage of justice. In this regard an explanation was called by his letter dated 25.08.2004 (P6) on the directions of the 2nd respondent as to why he came to the finding that the boy came about his death by committing suicide. The petitioner by letter marked P7 has explained that he came to the conclusion by examining the injuries found on the deceased that the death was due to suicide. 60

It is obvious that only by examining the injuries on the deceased who was run over by a train one cannot come to the conclusion that the death was due to suicide, accident or murder. The 1st respondent also submitted that by his letter dated 10.09.2004 observations were called from the learned Magistrate and he has observed that the petitioner has not duly performed his official duties and his services should be suspended till the conclusion of the inquiry. 70

The 1st respondent submitted that the learned Magistrate's observation and other facts in the said inquiry clearly established that the petitioner is an incompetent inquirer and to allow the petitioner to continue to function as an inquirer would obstruct the cause of justice and would lead to travesty of justice.

The Appointment of an Inquirer (Coroner) is provided under section 108 of the Criminal Procedure Act No. 15 of 1979. Under this section the Minister has discretion to appoint any person by name or by office to be an inquirer for any area. In this instant the petitioner by letter dated 23.11.1990 (P1) was appointed as an Inquirer (Coroner) with effect from 1.12.1990 for a period of three years. His services were extended time to time up to 18.12.2004 by letter dated 23.10.2003. The Ministry of Justice by its Circular No. 15/94, dated 21/6/2004 marked P2 has extended the retirement age of the inquirer from 65 to 70. But this extension has to be made yearly by the Minister after consideration of the application of the inquirer. The petitioner was given the extension time to time under the said circular yearly after consideration. On the said complaint made by the mother of a deceased boy, the respondents after 80 90

investigation and after calling for explanation from the petitioner found that the petitioner has not performed his duties as expected to be done by an inquirer and he has acted in an unbecoming manner. In these circumstances the extension given to the petitioner upto 18.12.2004 was terminated on 8.10.2004 (P8) for the reason stated in the said letter.

The petitioner contended that he was not served with a Charge Sheet regarding the alleged lapses on his part and the show cause letter marked P7 was based on the unfounded allegation of the deceased mother and he was not given an opportunity to be heard in defence before the arbitrary termination of his service and therefore the protection of the rules of natural justice has been denied to him. In these circumstances the petitioner seeks to quash the decision to terminate his service as an inquirer and a *Mandamus* directing the respondents to grant extension up to petitioner's 70 years. 100

The *audi alteram partem* rule requires that there should be prior notice and hearing for the person whose interests would be adversely affected by the act or decision in question. How this principle applies in any given case is depend upon the particular set of circumstances. More specifically, the wide range of cases in which the *audi alteram partem* principle is held applicable ensures that as a principle it can have no fixed and immutable content . Tukur LJ emphasised this point in *Russell v Norfolk*⁽¹⁾ at 118 D-E: 110

"There are no words which are of universal application to every kind of inquiry The requirement 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 that is being dealt with and so forth." 120

"It is conceivable therefore that there may be situations in which natural justice does not require that a person must be served with a charge sheet and an inquiry should be held. But a hearing should be given by calling for explanation or by requesting to explain a particular conduct. In this case the petitioner was only appointed as an inquirer under the Criminal Procedure Act. The appointment letter does not give the terms and conditions of the

appointment. The said appointment was not covered by the Establishment Code or any other Rule or Regulation for the authorities to follow the procedure set out in the Code, Rule or Regulation to terminate his service. The petitioner at the time of termination of his service was in extension and the extension is given after consideration of his ability. When the appointing authority is of the view that the ability of the petitioner is lacking he could refuse to give any further extension. But in this case the respondents before the expiration of the period of the extension has terminated the services of the petitioner therefore the petitioner has a legitimate expectation to serve until the end of his extended period of service. In these circumstances the petitioner is entitled for a hearing. In *Premachandra v Jayawickrema*⁽²⁾, at 105 the court held;

"There are no absolute or unfettered discretions in public law; discretions are conferred on public functionaries in trust for the public, to be used for the public good, and the propriety of the exercise of such discretions is to be judged by reference to the purposes for which they were so entrusted."

That applies to powers of appointment and dismissal, *Bandara v Premachandra*⁽³⁾ and *Tennakoon v de Silva*.⁽⁴⁾ In *Jayewardene v Wijeyetilleke*⁽⁵⁾ SC held:

"Respect for the Rule of Law requires the observance of minimum standards of openness, fairness, and accountability, in administration; and this means – in relation to appointments to, and removal from, offices involving powers, functions and duties which are public in nature – that the process of making a decision should not be shrouded in secrecy, and that there should be no obscurity as to what the decisions is and who is responsible for making it."

The extent and the nature of hearing in relation to a termination of service depends on the circumstances of the case, the nature of the service, the rules under which the respondent is acting, the subject matter that is being dealt with. As I have discussed above there is no rule governing the petitioner's

appointment and the appointment, extension and termination of service as an inquirer is in the discretion of the relevant minister. The petitioner is in extension of his service and his extension was coming to an end in December 2004 and the petitioner's service was terminated in October 2004 two months before the date on which the petitioner's extension was coming to an end. This was done after having given the petitioner a hearing by way of a show cause letter. In view of the facts and circumstances of this case the petitioner cannot claim that a charge sheet should have been served on him and an inquiry would have been held. The explanation given by the petitioner was not accepted by the respondents therefore the respondents terminated the services of the petitioner. In these circumstances the petitioner cannot state that the rules of natural justice have been denied to him. As the petitioner has not shown any other ground to challenge the said order this court dismisses this application without costs.

Application dismissed.