

BANDARA
V
WICKREMASINGHE

SUPREME COURT
G. P. S. DE SILVA, C. J.
KULATUNGA J.
RAMANATHAN, J.
S.C. 190/94
MARCH 19, AND JUNE 05, 1995.

Constitution – Article 11 of the Constitution – Student – Assaulted during school hours by school Authorities – Private Act not involving use of the coercive power of the State – Whether Executive or Administrative action – Acting under colour of office – Disciplinary Action not violative of Fundamental Rights – Excess of Disciplinary Power – Violation of Rights Article 11.

The petitioner who was a Minor and a student of Sri Subhuthi Vidyalaya alleged that he was assaulted during school hours by the Principal, Deputy Principal, Vice Principal and a teacher. It was further alleged that his father had detected some persons having brought arrack and ganja to the school during a Sports Meet, which had displeased the school Authorities; resulting in the assault on the Petitioner.

The Respondent's position was that, the Petitioner's father was displeased as he had not been given employment as a watcher by the school authorities and this application was at the instigation of the father, out of malice and vengeance. It was further alleged that, the Petitioner was sent home for misconduct.

Held:

(i) The contention that the alleged assault was purely individual private Acts not involving the use of the coercive power of the State and the impugned acts were in no way connected with the performance of official functions and hence the impugned acts do not constitute Executive or Administrative action cannot be accepted.

(ii) Discipline of students is a matter within the purview of school teachers. It would follow that whenever they purport to maintain discipline, they act under the colour of office. If in doing so they exceed their power they may become liable for infringement of fundamental rights by Executive or Administrative action.

(iii) In view of the seriousness of the derelictions and the issues involved, the claim of the Respondent that the impugned acts involved disciplinary action not violative of fundamental rights cannot be accepted.

Objectively viewed the assault on the petitioner by the respondents was in excess of disciplinary power and violative of rights under Article II.

Per Kulatunga, J.

" This court must by granting appropriate relief reassure the Petitioner that the humiliation inflicted on him has been removed and his dignity is restored. That would in some way guarantee his future mental health which is vital to his advancement in life."

Cases referred to:

1. *Theachanamoorthi v. Attorney-General* – FRD (1) 129
2. *Velmurugu v. Attorney-General* FRD (1) 180
3. *Samanthilaka v. Perera* – 1990 1 SLR 318
4. *Vivienne Goonewardena v. Perera* FRD (11) 426 at 438.

APPLICATION complaining of infringement of a Fundamental Right.

D. W. Abeykoon with L. L. Wanigasekera for Petitioner.
P. G. Dep, S.S.C., for Attorney-General
R. K. W. Goonesekera with J. C. Weliamuna for 1-3 Respondents

Cur. adv. vult.

July 21, 1995.

KULATUNGA, J.

At the time of the incident which gave rise to this application, the Petitioner was 17 years of age. He was a student of Battaramulla Sri Subhuthi Madhya Maha Vidyalaya. He complains that on 03.05.94, he was assaulted during school hours by the 1st, 2nd and 3rd respondents, who were the Deputy Principal, Vice Principal and a teacher respectively, of that school. On that day, the Principal of the school was absent. He alleges that by such conduct the respondents have infringed his rights under Article 11 of the Constitution.

On 28.04.94 the Principal had issued a certificate (P6) in respect of the petitioner, at the request of the petitioner's father, to enable the petitioner to be admitted to another school, in view of an impending change of residence.

According to P6, the petitioner had been the President of the School Buddhist Society and the Literary Union. He was a School Prefect and a member of the School Debating Team and the Leader of the Anti Narcotic Campaign. He was also the Secretary of the school Cricket Association. He was a person of good conduct and character.

The petitioner alleges that in 1993, his father had detected some persons having brought arrack and ganja to the school during a sports meet. This detection displeased the 1st and 3rd respondents. The respondents allege that the petitioner's father was displeased with the school staff as he had not been given employment as a watcher and that the petitioner has filed this application on the instigation of his father, out of malice and vengeance. However, the former Principal had written to the petitioner's father on 29.10.93 a letter (P7) addressing him as "Dear Mr. Tilak" and appealing against his resignation from posts in the School Development Society. The Principal states therein that the school valued the views of the petitioner's father and that his membership of the Society was indispensable.

According to the complaint made to the police by the petitioner's mother on 04.05.94 and the affidavits of the 1st and 2nd respondents, the petitioner had been going about the school premises on 03.05.94 saying that he was looking for his class teacher. In his statement to the police which was recorded at Mulleriyawa Mental Hospital on 30.05.94 (P5), the petitioner says that as he was not well on 03.05.95 he wanted to leave the school early, after informing the class teacher. The respondents state that Mrs. Fernando the class teacher had said that the petitioner was lying when he said that he was searching for her; whereupon the 2nd respondent instructed him to return to his classroom; at that stage the petitioner did not behave like a student. The 1st respondent says that the 2nd respondent reported to him that the petitioner had lied to him, saying that he was searching for Mrs. Fernando; and that when he was asked to return to the classroom, he did not behave like a student.

The petitioner says that the 1st respondent (who was in charge of the school in the absence of the Principal) sent for him and when he went up to the Principal's office, he was assaulted by the 1st, 2nd and 3rd respondents. The 2nd respondent struck him close to his eye while the 3rd respondent kicked him. It is common ground that before the alleged assault, the 2nd respondent had addressed the petitioner using the word "Thamuse" (you) to which the petitioner had taken exception. The respondents deny the alleged assault but admit the 2nd respondent having slapped the petitioner once. They say that in return, the petitioner slapped the 2nd respondent. The 1st respondent merely restrained the petitioner and handed the petitioner over to another teacher. The petitioner was detained until 1.30 p.m. after which he was allowed to leave with instructions to call over at the school with his parents for an inquiry.

The petitioner's application which is in English and presumably drawn up by his lawyer does not set out all the details of the incident. But his statement made to the police (in Sinhala) contains the details of the incident which are supported by the respondent's version, except in regard to the alleged assault. His version given to the police is also supported in every detail by the statement of his mother made to the police, subject however, to the weakness that she has failed to file a supporting affidavit. However, the fact that she made a statement to the police has not been specially denied.

On 03.05.94 the 1st respondent made a log entry at the school, stating that the petitioner was sent home on account of misconduct with instructions to call over with his parents. On 04.05.94 the respondents caused the Principal to summon the Disciplinary Committee of the school which approved the suspension of the petitioner for the alleged assault by him. The matter was also reported to the Deputy Director of Education, Homagama. The petitioner's father was requested in writing to attend a disciplinary inquiry on 09.05.94 against the petitioner on a charge of breach of discipline; but he replied stating that he would not attend the inquiry as he considered the conduct of the authorities to be unsatisfactory.

It is not known as to whether the Education Department took any decision in the matter. There is also no evidence of action taken by

the police to institute a prosecution on the complaint of assault on the petitioner by the respondents. Thus, the task of considering the petitioner's grievance has fallen entirely on this Court.

The medical evidence in respect of the petitioner has been of assistance in the consideration of the petitioner's complaint. As per medical records, the petitioner had been admitted to Mulleriyawa Mental Hospital on 04.05.94. The Psychiatric, Dr. D. R. de Silva has recorded that it was the petitioner's first admission to that hospital. The petitioner was thoughtful, refusing meals, and was crying on and off. He had difficulty in getting into sleep. He refused to go back to school. He was talking nonsense and was fearful. He was apparently well until 03.05.94 when he was assaulted by the "Assistant Principal" and two others, after which he developed the above symptoms. He had no previous history of psychiatric illness. The doctor has also recorded the fact that the petitioner is the youngest child in his family and was a school prefect. He was not an alcoholic or a smoker. After admission, the petitioner was first treated with tranquilizers.

The petitioner had contusions and abrasions over the left upper arm and pain and tenderness over the left temporal area and lumber region.

On 05.05.94 the petitioner vomited once. He still had pain in the left temporal area. He also had a headache. He suffered from anxiety state. He was given hot water fermentation and treated with paracitamol and tranquilizers. Even on 19.05.94 he had giddiness. After continued treatment, he was discharged on 02.06.94. The diagnosis was "phobic anxiety".

Learned counsel for the 1st, 2nd and 3rd respondents submits that the alleged assault was a purely individual private act not involving the use of the coercive power of the State, that the impugned acts were in no way connected with the performance of official functions of the respondents; that school teachers are not vested with the coercive power of the State; and that "they are expressly prohibited from laying a finger on the students;" hence the impugned acts do not constitute executive or administrative action. He submits that the application must fail for the lack of this "essential element." He relies

on *Thadchanamoorthi v. A.G.* ⁽¹⁾; *Velumurugu v. A.G.* ⁽²⁾, and *Samanthilaka v. Perera* ⁽³⁾.

In the early decisions of this Court the defence was often advanced by the State that the impugned acts of offending officers were purely private acts for which the State was not liable. The dicta relied upon by Counsel form part of the consideration of that issue. When the Court in some of the cases cited defined "executive or administrative action" in the sense of acts involving the use of the "coercive power" of the State, the reference there was to acts of police officers in the course of law enforcement.

However, in *Vivienne Goonewardene v. Perera* ⁽⁴⁾ Soza J., defined "executive or administrative action" more accurately when he said:

"The State no doubt cannot be made liable for such infringements as may be committed in the course of personal pursuits of a public officer or to pay off his personal grudges. But infringements of fundamental rights committed under **colour of office** by police officers must result in liability being cast on the State".

In the instant case, the facts clearly show that the respondents were acting under the "colour of office". In fact, the written submissions filed on 08.12.94 on behalf of the respondents state *inter alia*, "It is admitted that the Deputy Principal in charge of discipline slapped the petitioner once, on a disciplinary matter". I agree that discipline of students is a matter within the purview of school teachers. It would follow that whenever they purport to maintain discipline, they act under the colour of office. If in doing so, they exceed their power, they may become liable for infringement of fundamental rights by executive or administrative action.

For the foregoing reasons, I reject the preliminary objection raised by Counsel for the 1st to 3rd respondents.

The medical evidence supports the petitioner's version. The injuries found on him cannot be attributed to a single slap. The petitioner who was admittedly a very good student and a school

prefect suffered by the assault to the extent that he also became mentally ill requiring hospitalization at the mental hospital for a month. He had no history of psychiatric illness. I am satisfied that his condition was attributable to the humiliation he suffered by the assault on him, particularly for the reason that up to the date of the incident, he must have enjoyed a high reputation at the school. The position he held at the school is established by the certificate P6 issued by the Principal of the school.

The petitioner was 17 years of age at the time of the assault. Being a teenager, he was a person who is likely to suffer humiliation and nervous shock by violence of the kind complained of by him. I am of the view that the impugned assault was both cruel and degrading. Thus the allegation by the 2nd respondent that the petitioner was lying when he explained that he was searching for his class teacher does not appear to be justified on the facts. As such, the said allegation was an insult. The petitioner probably resented it. It was in that context that the petitioner was addressed as "thamuse". In such a context that word did not connote respect, as claimed by the respondents, particularly in the light of the fact that the 2nd respondent slapped the petitioner. According to the respondents, the provocation for that act was the fact that the petitioner pointed his finger and said that he would himself address the 2nd respondent as "thamuse". It was at that stage that the 2nd respondent slapped the petitioner which shows that the 2nd respondent lost his temper; and if as the respondents allege, the petitioner instantly retaliated with a slap that did not justify the uninhibited assault on the petitioner by the respondents. Objectively viewed, such conduct would be in excess of disciplinary power, and violative of rights under Article 11.

I reject the allegation against the petitioner's father that he instigated this application out of malice or vengeance, particularly having regard to the former Principal's letter (P7) addressed to him. I accept the petitioner's version and hold that the 1st, 2nd and 3rd respondents have infringed the petitioner's rights under Article 11 by assaulting him.

This Court has hitherto been deciding cases of torture by police officers. However, the victims of such torture generally belong to a

different class. Here it is a student with an unblemished record. This Court must by granting appropriate relief reassure the petitioner that the humiliation inflicted on him has been removed, and his dignity is restored. That would in some way guarantee his future mental health, which is vital to his advancement in life.

In view of the seriousness of the dereliction and the issues involved, I am unable to accept the claim of the respondents that the impugned acts involved disciplinary action not violative of fundamental rights. They are personally responsible for the violation. But in granting relief against them, I shall have regard to the fact that the assault appears to have occurred on the spur of the moment, which fact cannot be considered to be a complete mitigation, in the circumstances of this case.

In all the circumstances, I consider it just and equitable to direct that the petitioner be paid compensation in a sum of Rs. 50,000/- by the State. The 1st respondent is directed to pay Rs. 4000/- and 2nd respondent is directed to pay Rs. 4000/- and the 3rd respondent is directed to pay Rs. 2000/-, to the petitioner as costs. In the result the petitioner will be entitled to a total of Rs. 60,000/- *(Rupees Sixty Thousand) as compensation and costs.

The Registrar is directed to forward a copy of this judgment to the Secretary, Ministry of Education and Higher Education. The Secretary is directed to ensure that the compensation and costs ordered herein are expeditiously paid, to maintain a record of this judgment for departmental purposes and to take such other appropriate action and to report to this Court compliance with this judgment, on or before 31.08.1995.

G. P. S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Application allowed.