

REV. KESELWATUGODA CHANDANANDA THERO
V.
REV. SIRIMALWATTE ANANDA MAHANAYAKA THERO
AND OTHERS.

COURT OF APPEAL.
DR. RANARAJA, J.,
C.A. 616/89.
OCTOBER 22, 1996.

Buddhist Temporalities Ordinance - Section 41(1), (5) - Indisciplined conduct by a Pupil - Complaint by Robing Tutor - Inquiry by Maha Sangha Sabha - Conduct of Bhikkus- Prerogative Writs - Conduct of Inquiries - whether a Writ lies.

The original 3rd Respondent and the 4th Respondent were the Robing Tutors of the Petitioner. They complained to the Maha Nayaka Thero (1st Respondent) of the Malwatta Chapter of indisciplined conduct by the Petitioner and sought a declaration that he was no longer their pupil. After inquiry by the Maha Sangha Sabha, the Maha Nayaka Thero announced that the Petitioner had been removed from pupilage.

The Petitioner sought a Writ of Certiorari to quash the decision of the Maha Sangha Sabha and a writ of Mandamus against the original 1st and 2nd Respondents from altering cage 15 of the Declaration regarding the Petitioner under section 41(5) of the Buddhist Temporalities Ordinance.

Held:

(i) The decision of the Maha Sangha Sabha which relate to the internal discipline and conduct of the Bhikkus of the order are final. The Maha Nayaka Thero will act on the decision of the Sangha Sabha or the Maha Sangha Sabha.

It must be assumed that when the Maha Nayaka Thero informs the Commissioner of a decision to alter the entries in the register of Bhikkus, that an ecclesiastical dignity of that eminence would act with proper sense of responsibility.

Quaere

Does this court have a right through its writs to overturn a decision of the ecclesiastical body: was the decision conveyed by the Maha Nayake Thero

amenable to writ jurisdiction. The principles of Public Administrative Law suggests that it does not.

Per Ranaraja, J.

"Unlike in other faiths, where the followers seek salvation in one almighty God, in Buddhism the salvation of an individual lies in his own hands through his own conduct. It is the Maha Sangha Sabha and the Maha Nayake well versed in the Vinaya Pitaka who are best judges of questions of discipline amongst Bhikkus in the particular Nikaya. Courts should refrain from assuming jurisdiction over the conduct of inquiries into disciplinary matters between tutors and pupils which are private in nature."

(ii) Discipline of Bhikku is a matter governed by Vinaya Pitakaya, the inquiry into the charges and taking necessary action is a matter for the religious bodies. The Buddhist Ecclesiastical Tribunals are private in nature, they are not statutory bodies but institutions set up by each Nikaya to regulate its own internal affairs.

Their decisions are not judicially reviewable.

AN APPLICATION for a Writ of Certiorari/Mandamus.

Cases referred to:

1. *Maha Nayake Thero, Malwatta Vihara vs. Registrar General*, 39 NLR 168 at 190.

W.R.J. Herath for Petitioner.

Ms. Eva Wanasundera, S.S.C. for 2nd Respondent.

D.R.P. Gunatilake with *G.D. Piyasiri* for 3rd and 4th Respondents.

Cur adv. Vult.

22nd October, 1996.

DR. RANARAJA, J.

The original 3rd Respondent (3rd Respondent) and the 4th Respondent were the Robing Tutors of the Petitioner. They complained to the 1st Respondent Maha Nayaka Thero of the Malwatta Viharaya, by letter P2 dated 24.2.88, of indiscipline conduct by the Petitioner and sought a declaration that he was no longer their pupil and the

Register of Bhikkus be altered accordingly. The Petitioner was called upon by the 1st Respondent to explain the 10 charges against him made by the 3rd and 4th Respondents, which he did by P3 dated 9.8.88. An inquiry by the Sangha Sabha into the complaint of the 3rd and 4th Respondents was fixed for 4.9.88. The Petitioner was informed of the proposed inquiry by letter P4, dated 20.8.88. An attempt to bring a settlement of the dispute between the Petitioner on the one hand and the 3rd and 4th Respondents by the Attanagalla Sangha Sabha on reference by the Maha Sangha Sabha failed. There is no agreement between them as to what transpired before the Maha Sangha Sabha on 4.9.88. The 1st Respondent himself has not filed objections, as he had died before he was called upon to do so. It is alleged by the Petitioner, that the 1st Respondent by his order (P8) dated 6.4.89, announced that the Petitioner "Keselwatugoda Chandananda had been removed from pupilage". P8 is not available in the record. However, the 3rd and 4th Respondents have admitted in their objections that by P8, **"the 1st Respondent announced that the decision of the Maha Sangha Sabha was that the Petitioner had lost his right to continue as a Samanera of the 3rd and 4th Respondents, as it was impossible to continue their relationship of pupil and tutor on admitted facts"**. The 3rd respondent had forwarded a copy of P8, to the 2nd Respondent Commissioner of Buddhist Affairs, with covering letter dated 12.11.89, requesting appropriate action be taken. The 1st Respondent too had informed the 2nd Respondent of his decision to expel the Petitioner from the tutorship of the 3rd and 4th Respondents by letter dated 9.4.89. The Petitioner has filed this application seeking inter alia.

(a) A writ of certiorari quashing the decision of the Maha Sangha Sabha as conveyed by the deceased 1st Respondent, dated 6.4.89 (P8).

(b) A writ of prohibition against the original 1st and 2nd Respondents from altering page 15 of the declaration (P1), regarding the Petitioner, under the provisions of section 41(5) of the Buddhist Temporalities Ordinance.

Section 41(1) of the Buddhist Temporalities Ordinance requires a register of Bhikkus to be maintained by the Commissioner of Buddhist Affairs. Section 41(5) requires The Mahanayaka Thero or Nayaka Thero

of every Nikaya, from time to time make all corrections, additions or alterations in his registers as may be necessary to keep them up to date. Once the modifications in his registers are made, the Mahanayaka or Nayaka Thero has to inform the Commissioner of Buddhist Affairs, who is obliged to similarly modify the registers maintained by him.

A Bhikku must at all times be obedient to his tutor. The Vinaya Pitaka comprises the rules of discipline and the Patimokkha is the code listing 227 offences for which a Bhikku may be charged by another Bhikku at an Uposatha Ceremony. A complaint could also be made directly to the Nayaka Thero. Such a complaint may be referred to the Sangha Sabha, which could inquire into such complaint themselves, or refer the matter to the Nayaka Thero for inquiry. The Sangha Sabha comprising of Upasampada Bhikkus, well versed in the Vinaya rules, free from blame and not undergoing punishment for any offence themselves, will conduct such inquiry. The Bhikku whose conduct is being inquired into, has to be given notice of the charge and afforded an opportunity of defending himself. The delinquent Bhikku may object to any of the Bhikkus forming the Sabha before which the inquiry is held. One of the Bhikkus of the Sabha will be selected as Arbitrator and another as secretary. After recording of evidence of both parties, the Sabha will decide by a majority vote in favour or against the delinquent Bhikku. A Bhikku found guilty of an offence by the Sangha Sabha has a right of appeal to the Maha Sangha Sabha, whose decision is final. The Mahanayaka or the Chief High Priest is the President of the Maha Sangha Sabha. The decision of the Maha Sangha Sabha which relate to the internal discipline and conduct of the Bhikkus of the order are final. The Maha Nayaka Thero will act on the decision of the Sangha Sabha or the Maha Sangha Sabha as the case may be.

(see : **Dissanayake and de Soysa - Kandyan law and Buddhist Eccleciastical Law - P293 - 294**).

The relationship of tutor and pupil is sufficient to make the pupil bound by a Judgment. It must be assumed that when the Maha Nayaka Thero informs the Commissioner of a decision to alter the entries in the register of Bhikkus in respect of a Bhikku of that particular Nikaya, that an eccleciastical dignitary of that eminence would act with a proper sense of responsibility. See : *Maha Nayaka Thero, Malwatta Vihara v. Registrar General.*⁽¹⁾

The Petitioner's complaint is that he was not afforded an "adequate hearing" by the Maha Sangha Sabha before the decision conveyed by P8 was taken. He has failed to elaborate what he meant by an "adequate hearing". The 3rd and 4th Respondents on the other hand have in their affidavit affirmed that the Petitioner was given an adequate hearing on 4th September 1988, and the matter was thereafter referred to the Sangha Sabha at Attanagalla, only for the purpose of exploring the possibility of a settlement. This has not been countered by the Petitioner. The Petitioner has not made the members of either the Sangha Sabha or the Maha Sangha Sabhas Respondents to this application. In such a situation, the death of the 1st Respondent Maha Nayaka, before he could file objections, becomes extremely relevant to this application. It is the 1st Respondent, in the absence of the members of the Sangha Sabhas as respondents, who was in the best position to explain on what evidence the Maha Sangha Sabha came to make the decision P8. In the absence of the 1st Respondent, this Court could not come to a fair and equitable decision, and the application, with respect, should have been abated at that stage. In writ applications this Court functions as a Court of equity. It would be improper in the circumstances, to make any Judgment against a person, who cannot by reason of his death defend the impugned decision before this Court. To do so, would be to violate the basic principle of *audi alteram partem*. The substitution of the present Incumbent in no way satisfies that principle. It is in that context that this Court thought it fit to abate the application on the death of the Petitioner's principal tutor.

More importantly, does this Court have a right, through its writ to overturn a decision of an ecclesiastical body? In other words, was the decision conveyed by P8 amenable to writ jurisdiction? The principles of Public Administrative Law suggest that it does not. Unlike in other faiths, where the followers seek salvation in one almighty God, in Buddhism the salvation of an individual lies in his own hands, through his own conduct. Thus the discipline of the Bhikkus is of paramount importance. It is the Maha Sangha Sabha and the Maha Nayaka, well versed in the Vinaya Pitaka, who are best Judges of questions of discipline amongst Bhikkus in the particular Nikaya. Courts should refrain from assuming jurisdiction over the conduct of inquiries into disciplinary matters between tutors and pupils, which are private in nature, by Buddhist ecclesiastical tribunals. Those Tribunals are not

statutory bodies, but institutions set up by each Nikaya to regulate its own internal affairs. This view can be supported by Authority.

"Decisions of Leaders of particular faiths on disciplinary issues are also, as authorities stand, not judicially reviewable". That is because there is no sufficient public element and no statutory underpinning. Further, questions of religious law and faith are not appropriate subjects of judicial review. See : **De Smith - Judicial Review of Administrative Action, 5th ed : P 186.**

As seen, discipline of Bhikkus is a matter governed by Vinaya Pitakaya. By P2 dated 24.2.88, the 3rd and 4th Respondents have complained to the 1st Respondent of the Petitioner's indisciplined conduct, enumerating 10 such instances. The inquiry into the charges and taking appropriate action is a matter for the religious bodies according to procedure as explained above. Bhikkus have theoretically given up all worldly desires. The Petitioner has now left this country and taken up residence in Taiwan, allegedly to pursue studies. He has also instituted an action against the 3rd and 4th Respondents in the District court of Gampaha claiming maintenance.

The Petitioner's application for a writ quashing decision P8 is therefore one which this Court with great respect, should not have entertained. The second relief sought, follows from the first. The application is accordingly dismissed without costs.

Application dismissed.