

RAHUMA UMMA
V.
BERTU PREMALAR DISSANAYAKE

SUPREME COURT.

G.P.S DE SILVA, C.J.

KULATUNGA, J. AND

RAMANATHAN, J.

S.C. APPLICATION NO. 120/95.

29TH DECEMBER 1995 AND 15TH JANUARY, 1996.

Fundamental Rights- Articles 14(1) (a) and 14(1)(b) of the Constitution - Executive or administrative action - Article 126 of the Constitution - Liberal or purposive approach.

The Petitioner the Principal of a school had arranged a function at the school for the opening of a newly constructed building for the school and for awarding prizes to students. The Chief Minister and the Minister of Education of the area had been invited to be the Chief Guest. The Petitioner complained that before the function commenced the 1st, 2nd and 3rd Respondents arrived in the company of 4th to 6th Respondents who were Police Officers and disrupted the meeting by pulling down the pandol put up to welcome the Chief Minister. The 1st Respondent is a Member of Parliament for Anuradhapura and the Deputy Minister of Industries. The 2nd Respondent is a former member of Parliament and the 3rd Respondent is a Member of the Provincial Council, North Central Province. Thereafter the 1st Respondent himself presided at the function, gave away the prizes and left the meeting. The 1st Respondent also made an entry in the log book of the school directing the Deputy Director of Education to investigate the Petitioner's conduct engaging in political activities within the school. The 1st Respondent's position was that he visited the school on a request for intervention made by the 2nd Respondent, to prevent a breach of the peace.

Held:

In considering whether the impugned acts constitute "executive or administrative action" within the meaning of Article 126, a liberal or purposive approach should be adopted; accordingly the acts of a public officer acting under colour of office would constitute "executive or administrative action" even if they involve abuse of power or exceed the scope of his authority.

Cases referred to:

1. *Velumuru v. A.G.* Fundamental Rights decisions Vol. 1 180, 224.

2. *Sunanda Deshapriya and another v. Municipal Council Nuwara-Eliya and Mayor of Nuwara Eliya S.C.* Application No.884/92 S.C. Minutes of 10th March 1995.
3. *Upaliratne and Others v. Tikiri Banda and Others* (1995) 1 Sri L.R.165.
4. *Mohamed Faiz, Wild Life Ranger v. A. G.* S.C. Application No. 89/91 S.C. Minutes of 19th November, 1993.

Preliminary objection to maintenance of fundamental rights application.

D.S. Wijesinghe, P.C. with *Ajith Wijesurendra* for Petitioner.

Faisz Musthapha, P.C. with *Dr. J. Wickremaratne, N.M. Saheed* and *Mahanama de Silva* for 1st, 2nd and 3rd Respondents.

Kolitha Dharmawardena, S.S.C., for 4th to 8th Respondents.

Cur.adv.vult.

8th March, 1996

G.P.S. DE SILVA, C.J.

Mr. Musthapha for the 1st, 2nd and 3rd Respondents raised the preliminary objection that the complaint of the Petitioner does not fall within the meaning of the expression "executive or administrative action" in Article 126 of the Constitution. We invited Mr. D.S. Wijesinghe for the Petitioner and Mr. Musthapha for the 1st, 2nd and 3rd Respondents to make their submissions in writing on the preliminary issue of liability. This is the only question that presently arises for consideration before us.

The Petitioner who is the Principal of the Muslim Maha Vidyalaya, Kekirawa, complains in her Petition that her fundamental rights of freedom of speech and expression and of peaceful assembly guaranteed by Article 14(1)(a), and 14(1)(b) have been violated by the Respondents. The 1st Respondent is the Member of Parliament representing the Anuradhapura electoral district and is presently the Deputy Minister of Industries. The 2nd Respondent is a former member of Parliament who represented the Anuradhapura electoral district. The 3rd respondent is a member of the Provincial Council of the North-Central province. The 4th to 6th Respondents are Police Officers attached to the Anuradhapura Police Station.

The Petitioner avers in her Petition that arrangements had been made to have the formal opening of a newly constructed building for the school on 13.3.95. It had also been decided to have a meeting of the students, parents and well-wishers of the school at the school hall on the same occasion; in addition there was to be a prize giving to award prizes for the scholarship winners of the school. Mr. G.D. Mahindasoma, the Chief Minister and Minister of Education of the Provincial Council of the North Central Province and other officers attached to the Divisional Education Office at Kekirawa were amongst the invitees. These events were scheduled to be held at 3 p.m. that day.

According to the Petitioner, events took an unexpected turn. While the final arrangements for the formal ceremonies were being made at the school, at about 12.30 p.m., large crowd of persons led by the 1st Respondent and Police officers in uniform suddenly invaded the school premises and proceeded towards the Petitioner's office. The 1st Respondent was accompanied by the 2nd and 3rd Respondents as well as the 4th to the 6th Respondents. The pandol at the entrance to the school which was put up to welcome Mr. Mahindasoma, (Chief Guest), was pulled down by the crowd. The 1st Respondent entered the Petitioner's office and occupied her chair and demanded the Log Book of the school. He then made an entry in the Log Book and thereafter proceeded towards the new building, cut the ribbon which was meant to be cut at the formal opening by the Chief Minister. The 1st Respondent along with the other Respondents thereafter entered the new building, directed the persons present to assemble at the school hall where the meeting and the prize giving were scheduled to be held. The 1st, 2nd and 3rd Respondents got on to the stage, directed that the prizes which were to be awarded to be brought onto the stage and proceeded to make speeches and distribute the prizes. Thereafter, the entire group of persons "helped themselves to the refreshments that were kept in one of the rooms." Having thus completed the events that were scheduled for 3 p.m., the 1st, 2nd and 3rd Respondents accompanied by the 4th to 6th Respondents left the school premises at about 1.30 p.m.

The Petitioner complains that as a result of the "mock" events that took place, she was deprived of the right to hold the meeting at

the school premises and to address the students, staff and well-wishers of the school, as previously arranged.

The position of the 1st Respondent may be summarized as follows :- According to him, on the 13th March 1995 at about 11 a.m. the 2nd Respondent had informed him that there could be a serious breach of the peace at the school premises and sought his intervention in the matter. Thereupon the 1st Respondent along with the 2nd and 3rd Respondents had visited the school around 12 noon. The 1st Respondent states that he observed a large group of persons in the school premises and "there appeared to be tension." He had noticed that the school premises had been decorated only in green flags and banners of a political nature. The 1st Respondent along with 2nd and 3rd Respondents had met the Petitioner at her office and had "clearly indicated to her that it was not proper to have party politics in school affairs." It is the position of the 1st Respondent that he participated at the opening ceremony of the building and at the "prize giving" at the invitation of the Petitioner herself and the purpose was to diffuse the prevailing tense situation. Moreover, the Petitioner admits that he made an entry in the Log Book.

The contents of the entry made in the Log-Book (P4) are not without relevance. In the log-entry the 1st Respondent had directed the Deputy Director of Education, Kekirawa, to investigate and report to him (1st Respondent) the conduct of the Petitioner who is engaging in political activities within the school premises.

The principal submission of Mr. Musthapha was that "even if the Petitioner's version is totally believed it is clear that the 1st Respondent did not have even a vestige of authority as far as the school is concerned. The alleged acts were not even remotely related to the office of Deputy Minister of Industrial Development. As member of Parliament the 1st Respondent had no executive authority at all The 2nd Respondent is only a former member of Parliament. His actions are that of a private person. The 3rd Respondent is a member of the North Central Provincial Council. He is a member of the opposition in the Council. It is clear that he too has no executive authority." While conceding that a public officer can be held liable when acting under colour of office. Mr. Musthapha contended that "this doctrine will

not apply where a public officer acts totally without jurisdiction and has no vestige of authority". And the argument was that the 1st Respondent who was the Deputy Minister of Industrial Development "had no authority whatsoever in relation to the administration of the school."

In considering the preliminary objection, it seems to me that the correct approach to be adopted was lucidly and cogently expressed by Sharvananda, J., (as he then was) in his dissenting judgment in *Velmurugu v. A.G. and Others*⁽¹⁾ "In view of the vital nature of this constitutional remedy, it is in accord with the aspirations of the Constitution that this court should take a liberal view of the provisions of Article 126, so that a subject's right to the remedy is in no manner constricted by finely spun distinctions concerning the precise scope of the authority of State Officers and the incidental liability of the State If the State invests one of its officers or agencies with power which is capable of inflicting the deprivation complained of, it is bound by the exercise of such power even in abuse thereof; the official position makes the abuse effective to achieve the flouting of the subject's fundamental rights The idea underlying Article 126 is that no one by virtue of his public office or position should deprive a citizen of his fundamental rights without being amenable to Article 126, even though what the official did constituted an abuse of power or exceeded the limits of his authority. This sweep of State action, however, will not cover act of officers in the ambit of their personal pursuits, such as rape by a police officer of a woman in his custody. such acts has no relation to the exercise of the State power vested in him. The officer has taken advantage of the occasion, but not his office, for the satisfaction of a personal vagary". It is well to bear in mind that the court was here dealing with the conduct of a police officer in relation to an allegation of the infringement of Article 11. What is relevant for present purposes and what needs to be stressed is that Sharvananda, J. adopted a liberal and "purposive" approach, in construing the expression "executive or administrative action" in Article 126.

A decision which has a direct bearing on the issue before us is the judgment of Fernando, J., in *Sunanda Deshapriya and Another v. Municipal Council, Nuwara Eliya and the Mayor of Nuwara Eliya* ⁽²⁾.

This was a case where the editor and proprietor of the newspaper "Yukthiya" complained that their fundamental right guaranteed by Article 14(1)(a) was infringed by the 2nd Respondent, the Mayoress of the Nuwara-Eliya Municipal Council. The case for the Petitioner very briefly was that the 2nd Respondent came to the newspaper stall which was near the entrance to the park on 10.10.92. at about 11 a.m. and forcibly took away the copies of the "Yukthiya" which were in the stall at that time. The stall was owned by the Municipal Council of Nuwara Eliya. It was the position of the 2nd Respondent that it was her practice to tour the town accompanied by the officials "to ensure that the town was kept in a clean and sanitary condition". The 10th of October was one of those days when she was engaged in a tour of the town. She went to the stall to buy a newspaper and observed that the stall was not in a clean condition. She directed the occupant of the stall to clean up the place. She denied the seizure of the newspapers. The finding of the court was that she did seize the newspapers on that occasion. On the critical question whether the seizure was by executive or administrative action, Fernando J., expressed himself thus : -

" I hold that the 2nd Respondent did seize 450 copies of "Yukthiya" on 10.10.92; that she did so **while purporting to exercise her functions and while acting under colour of her office**, as Mayoress of the Nuwara Eliya Municipal Council. The seizure was therefore by executive or administrative action." (The emphasis is mine.)

As rightly submitted by Mr. Wijesinghe, Counsel for the Petitioner, the Mayoress had no official function whatever to perform in respect of the sale of newspapers at the stall. What is more, the seizure of the newspapers was in no way related to the office she held. Nevertheless, the finding was (rightly in my view) that she was "acting under colour of her office as Mayoress of the Nuwara Eliya Municipal Council". The decision in this case therefore runs counter to the submission of Mr. Musthapha that the doctrine of "acting under colour of office" does not apply where a public officer acts totally without jurisdiction and has no vestige of authority".

In support of his submissions Mr. Musthapha relied also on the following passage in the judgment of Amerasinghe, J. in *Upaliratne*

and Others v. Tikiri Banda and Others⁽³⁾ " when a public officer takes acts relating to his office, those actions should be considered to be executive action even if they exceed the scope of his authority, for he acts under colour of his office", Mr. Musthapha emphasized the words "relating to his office". This part of the judgment refers to the conduct of the first Respondent who was the Co-ordinating Secretary to "Hon, Colonel Anuruddha Ratwatte, M.P., and Minister of Irrigation, Power and Energy and Deputy Minister of Defence " The finding of the Court was that in all the circumstances "it seems more probable than not that Mr. Tikiri Banda (i.e. the 1st Respondent) played a key-role in the unlawful eviction of the Time Keepers who were members of the Central Bus Workers Co-operative Society and in placing other persons in substitution." (at page 185) His conduct had no relation whatever to any matter pertaining to the subjects of Irrigation, Power, Energy and Defence. This was a dispute which concerned the Transport Ministry of the Central Provincial Council and the Central Province Private Bus workers Co-operative Society. Nevertheless the court held that he was acting under "colour of his office". When the judgment is read as a whole in the light of the established facts, it seems to me that this case too does not support Mr. Musthapha's contention. On the other hand, it is in accord with the view taken by Fernando, J., in *W.M. Sunanda Deshapriya's case (supra)*.

Finally, the answer to Mr. Musthapha's contention that the acts of the 2nd and 3rd Respondents are acts of private individuals (and therefore does not fall within the provisions of Article 126) is found in the reasoning of Fernando, J. in his judgment in *Mohamed Faiz, Wild Life Ranger v. A.G.*,⁽⁴⁾ "Article 126 speaks of an infringement by executive or administrative action; it does not impose a further requirement that such action must be by an Executive Officer. It follows that the act of a private individual would render him liable if in the circumstances that act is 'executive or administrative'. The act of a private individual would be executive if such act is done with the authority of the Executive; such authority transforms an otherwise purely private act into executive or administrative action; such authority may be expressed, or implied from prior or concurrent acts manifesting approval, instigation, connivance, acquiescence, participation, and the like"

For these reasons the preliminary objection is overruled.

RAMANATHAN, J. – I agree.

KULATUNGA, J. – I concur with the order proposed by my Lord the Chief Justice, in particular for the reason that as a matter of principle it is necessary to decide the preliminary objection in the light of the particular facts and circumstances of the case and in a manner that would advance fundamental rights.

In the instant case, the acts complained of were done by the 1st and 3rd Respondents, a Deputy Minister and a member of the North Central Provincial Council respectively, each of whom has the status of a public authority. The 4th to 6th Respondents provided them with security. They acted under colour of office. Hence the overall picture is that the acts complained of constitute "executive or administrative actions" within the meaning of Article 126(1) of the Constitution. Judge of the Supreme Court.

Preliminary objection overruled