

No. 22 of 1974

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT IN MALAYSIA HOLDEN AT  
KUALA LUMPUR (APPELLATE JURISDICTION)

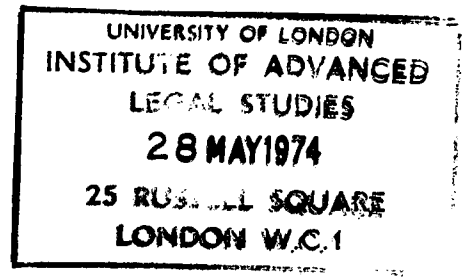
B E T W E E N

N. MAHADEVAN (an Infant)  
suing by his father and next  
friend M. Nadchatiram Appellant

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AND

1. K. ANANDARAJAN, (Headmaster)  
King George V School, Seremban
  2. THE MINISTER FOR EDUCATION, MALAYSIA
  3. BOARD OF GOVERNORS, King George V School  
Seremban
- Respondents



CASE FOR THE RESPONDENTS

RECORD

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1. This is an Appeal by the Appellant, N. Mahadevan, from an Order of the Federal Court in Malaysia (Suffian, acting Lord President, Gill F.J. Ali F.J. dissenting) allowing an Appeal by the Respondents from a decision of Abdul Hamid J. upon the 5th September 1969 whereby he declared that the order of expulsion of the Appellant as a pupil of the King George V School, Seremban, made by the First Respondent with effect from the 4th May 1968 was null and void and of no effect and ordered that the Appellant be reinstated as a pupil in the said school.

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2. The Appellant was at all material times prior to the 4th May 1968 a pupil in the King George V School, Seremban. The First Respondent was the Headmaster of the said school. The

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Third Respondents are the Board of Governors of the said school who heard an appeal by the Appellant against his expulsion and confirmed the order of the First Respondent. The Second Respondent is the Minister of Education for Malaysia, to whom the Appellant could further have appealed from the decision of the Board of Governors but to whom he made no appeal. The principal issue upon this appeal is whether prior to deciding to expel the Appellant from the said school the First Respondent complied with the principles of natural justice. 10

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3. By his Statement of Claim dated the 13th June 1968 the Appellant alleged that the First Respondent had acted maliciously, capriciously, wrongfully and without any lawful reasons in his purported expulsion of the Appellant from the said school. Abdul Hamid J. rejected this contention. He held that the First Respondent had good reasons for wanting to expel the Appellant and that he had acted honestly and in good faith. The Appellant did not challenge this finding upon appeal to the Federal Court. The Appellant, however, further alleged by his Statement of Claim that his expulsion was contrary to the rules of natural justice. 20

4. There was a substantial conflict of evidence before Abdul Hamid J. Abdul Hamid J. made the following findings of fact which were not challenged by either Appellant or Respondents in the Federal Court of Malaysia and, as to which there is accordingly now no dispute. On the 1st April 1968 the Appellant, in company with other pupils, attended a Talentime Show. The First Respondent received a report of misconduct by the Appellant at this Show from the teacher in charge. He also received reports of misbehaviour by the Appellant at the Show from the Head Prefect and the Chairman of the Interact Club. He saw the Appellant together with two other boys, on the 2nd April 1968 and questioned them upon their behaviour. He subsequently saw the Appellant alone and put to him instances of misconduct both at the Talentime Show and on other occasions. The suggestions of misbehaviour included an allegation that the Appellant had occupied a 3/- seat at the Show after paying for a 2/- seat. 30 40

10 seat; that he had left the Hall a few times during the Show; that he had shouted filthy words and flicked matches; that he had blatantly defied authority and had misbehaved towards the Prefect Board; that on one occasion he had brought a letter from his father indicating that he was ill so as to be excused school activities. The First Respondent told the Appellant that teachers had formed the view that the Appellant's work was far from satisfactory and that he was a bad influence in the class. The Appellant, when these instances were put to him, admitted some acts of misconduct, denied others and in one case kept silence when an allegation was put to him. The Appellant said at one stage that the First Respondent could be charged with defamation of character. It was never suggested on his behalf that he was deprived of the opportunity of saying anything he wanted to say upon this occasion. The First Respondent informed the Appellant that he would probably expel him or take some action against him. The learned Judge held that the Appellant had reasons to believe that the First Respondent might expel him. The First Respondent decided after the said interview that the Appellant's conduct justified expulsion but he thereafter consulted senior colleagues before taking a firm decision on the 10th April to expel the Appellant.

30 5. Upon these findings, Abdul Hamid J. considered whether the requirements of natural justice had been complied with. The Appellant was expelled pursuant to Regulation 8 of the Education (School Discipline) Regulations, 1959 (L.N. 61/1959) which provides :-

"Whenever it appears to the satisfaction of the head teacher of any school -

40 (a) to be necessary or desirable for the purpose of maintaining discipline or order in any school that any pupil should be suspended or expelled ... he may by order expel him from such school."

Under Regulation 10, a pupil or his parent

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might appeal against a decision of the head teacher under Regulation 8 and there was a further right to challenge the decision of the Board of Governors before the Minister. The learned Judge held that the rules of natural justice applied to the expulsion of the Appellant. He further held that it was probable that at the interview on the 2nd April the Appellant failed to realise that the First Respondent was, in fact, proposing to expel him. 10 He further held that the First Respondent at no time gave any definite information or warning to the Appellant during that interview that he was going to be expelled unless he could give an explanation. He held that, whilst the intention to expel the Appellant might be forming in the First Respondent's mind, as he had not come to any definite decision the Appellant could not have known or have had reasons to believe that he was appearing before a 20 disciplinary proceeding for his expulsion. The learned Judge held, notwithstanding his finding that the Appellant had reason to believe that the First Respondent might expel him, that at best it could be inferred that the Appellant knew or had good reasons to believe that some form of punishment might be imposed. The learned Judge further held that the warning to the Appellant that he might probably be expelled fell short of the requirements of natural 30 justice, and that the First Respondent failed to give adequate notice to the Appellant to enable him to appreciate the exact nature and purpose of the proceedings when he interviewed the Appellant. He held that such omission had the effect of depriving the Appellant of a fair opportunity of being heard and invalidated the decision of the First Respondent.

6. Abdul Hamid J. did not go on to consider the effect of the proceedings before and the decision 40 of the Board of Governors as to which evidence had been given. In the Federal Court the Appellant did not seek to contend that his judgment should be upheld on the ground that proceedings before the Board of Governors were invalid and, accordingly, no issue now arises in relation to these proceedings.

7. On appeal to the Federal Court, it was accepted by the Respondents that the rules of

natural justice applied, but it was not conceded that the principle of audi alteram partem applied to a decision of a headmaster to expel a pupil from a school. Gill F.J., with whose judgment Suffian acting Lord President concurred, held that upon the facts found by the learned Judge the rules of natural justice had been complied with. He held that such rules did not require that the Appellant should have been given adequate notice of his impending expulsion; they required that the nature of the accusation should be made known to him but not necessarily the punishment which could be inflicted upon him. He held that there was ample evidence to show that the Appellant was told of specific instances of misbehaviour. He held that where no procedure was laid down for the form of an enquiry, a person with a quasi-judicial function was free to adopt his own rules of procedure provided that they were fair having regard to the circumstances of the case and referred to Russell v. Duke of Norfolk (1949) 1 All E.R. 109; University of Ceylon v. Fernando (1960) 1 All E.R. 631; and Ridge v. Baldwin (1964) A.C. 40. He held that the form of the enquiry conducted by the First Respondent was complied with in that the nature of the allegations was stated to the Appellant and that he was given and took the opportunity to state his own case. He held that it was unnecessary for the First Respondent, having held one enquiry on the 2nd April, so as to satisfy himself of the truth or falsity of the allegations upon the basis of which he might make an order for the Appellant's expulsion, to go on to hold another enquiry to enable the Appellant to show cause why he should not be expelled. He further held that the fact that the First Respondent consulted with his colleagues before making the order so as to check his own view of the matter did not involve any violation of the requirements of natural justice. He held, in summary, that the First Respondent acted justly and reached just ends by just means in making the order of expulsion. Ali F.J. gave a dissenting judgment in which he agreed with Abdul Hamid J. He held that, if the Respondent did not know that he was going to be expelled, it was reasonable to infer that he

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could not possibly know the significance of giving any explanation to avoid expulsion. He held that the head teacher's evidence disclosed nothing more than a severe reprimand or a warning that the Appellant would find himself in trouble if he persisted in behaving in the way he was reported to have behaved in the past.

8. The principal submissions of the Respondents are :-

- (i) The requirements of natural justice must depend upon the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and there are no words which are of universal application to every kind of enquiry. Natural justice requires that the procedure before any person having a quasi-judicial function shall be fair in all the circumstances: see Russell v. Duke of Norfolk (1949) 1 All E.R. 109; Wiseman v. Borneman (1971) A.C. 297. 10 20
- (ii) In the instant case, before deciding to expel the Appellant, it was the duty of the First Respondent to act with common fairness: see R. v. Senate of University of Aston, ex parte Roffey and Another (1969) 2 All E.R. 964.
- (iii) In the instant case, the Appellant was treated with such common fairness and in compliance with the rules of natural justice. At the interview between the Appellant and the First Respondent, the Appellant was informed of allegations against him and given an opportunity to deal with them and the procedure was fair in the context of the relationship between pupil and head teacher of a school. This is particularly so where the pupil concerned has a right of appeal to a Board of Governors and where, under the Regulations, a relatively wide discretion is vested in the Headmaster. It was unnecessary that the pupil should have been given a further specific opportunity to show cause why he should 30 40

not be expelled. In many disciplinary proceedings before a professional body the ultimate outcome of an enquiry can vary, assuming proof of guilt, from a reprimand to an expulsion from the profession. In such cases, the relevant facts are enquired into and matters put forward in mitigation without the tribunal ever being obliged to state that they are specifically directing their minds towards an anticipated penalty of expulsion. In the instant case, there was no requirement of any formal disciplinary proceedings and, in any event, the possibility of expulsion was mentioned to the Appellant and was present to his mind at the interview on the 2nd April so that he could have dealt with it at that time.

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20 9. There are subsidiary points which arise :-

(i) By an Interim Consent Order made in the proceedings on the 5th July 1968 the Appellant was reinstated to the school upon condition that he remained subject to the school rules, regulations and discipline. The Appellant has now ceased to be a pupil of the said school and, accordingly, the final relief prayed for before the learned Judge is no longer appropriate.

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- (ii) As the Appellant has ended his school career, the claim to a declaration raises an academic question, and in the exercise of discretion should be refused.
- (iii) In any event, upon the Appellant's own case, there is no ground for ordering relief by way of declaration against the Second Respondent.

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WHEREFORE the Respondents submit that this Appeal should be dismissed for the following, amongst other

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R E A S O N S

- (1) BECAUSE there was no failure by the First Respondent or any of the Respondents to comply with the rules of natural justice in determining to expel the Appellant from the said school.
- (2) BECAUSE the judgment of Gill F.J. and the concurrence therein of Suffian acting Lord President were right.
- (3) BECAUSE the Appellant should be refused the relief ordered to him by the learned Judge.

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ROBERT ALEXANDER



No. 22 of 1977.

IN THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL

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O N A P P E A L

FROM THE FEDERAL COURT IN MALAYSIA  
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B E T W E E N :

N. MAHADEVAN (an Infant)  
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Appellant

AND

1. K. ANANDARAJAN (Headmaster)  
King George V School,  
Seremban
2. THE MINISTER FOR EDUCATION,  
MALAYSIA
3. BOARD OF GOVERNORS, King  
George V School Seremban.

Respondents

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CASE FOR THE RESPONDENTS

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Solicitors for the Respondents