

Privy Council Appeal No. 22 of 1971

N. Mahadevan (lately an infant but now of full age) – – – – – *Appellant*

v.

K. Anandarajan and others – – – – – *Respondents*

FROM

THE FEDERAL COURT OF MALAYSIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 22ND NOVEMBER, 1973

Present at the Hearing :

LORD DIPLOCK

LORD GUEST

VISCOUNT DILHORNE

LORD KILBRANDON

LORD SALMON

[*Delivered by* LORD DIPLOCK]

Regulation 8 of the Education (School Discipline) Regulations 1959, of Malaysia, empowers a Head Teacher to expel a pupil whenever it appears to his satisfaction to be necessary or desirable for the purpose of maintaining discipline or order in the school that the pupil should be expelled. Acting under this power, the 1st respondent, K. Anandarajan, as Headmaster of King George V School, Seremban, on 4th May 1968, expelled the appellant who was then seventeen years old. It is not disputed that, in using this power of expulsion, the Headmaster was required to act in accordance with natural justice. The only issue remaining in this case is whether or not he did.

As the action was originally framed, the appellant alleged that the Headmaster had acted maliciously and without any lawful reasons in expelling the appellant from the school, but this allegation was rejected by the Judge, Abdul Hamid J., who tried the action in the High Court in Malaya, and has not been further pursued. He found as a fact that the Headmaster had acted *bona fide* and had good reason for expelling the appellant. There remained the alternative allegation that, notwithstanding this, the procedure adopted by the Headmaster in reaching his decision to expel the appellant was contrary to the rules of natural justice.

The relevant facts, as found by the Judge and accepted by the Federal Court of Malaysia, can be stated briefly.

On 2nd April 1968, as a result of reports which he had received about the misbehaviour of the appellant and two other boys at a "talentime" show held at the school on the previous day, the Headmaster interviewed the three culprits and invited them to explain their conduct. He then saw the appellant alone and taxed him with a number of previous instances of misconduct and asked him to explain them. After hearing the appellant's explanations and excuses he then considered whether the cumulative effect of the appellant's misconduct was such as to make it necessary or desirable for the purpose of maintaining discipline in the school that the appellant should be expelled. Before reaching a final decision he thought it right

to seek the views of other members of the teaching staff who had known the appellant longer than he had, as he had only been appointed to the school as Headmaster some three months before. Although he had reached his final decision to expel the appellant on 10th April 1968, the notification to the appellant of his expulsion was delayed until the 4th May owing to the intervening absence of the Headmaster from the school on official duties.

At the interview on the 2nd April the Headmaster did not specifically inform the appellant that he intended to expel him unless he could provide a satisfactory explanation for his misconduct. Indeed, he could hardly have done so, as he had not at that time reached a final decision that expulsion was the only appropriate punishment. It was, however, found as a fact by the Judge that, at the time of that interview, the appellant had reason to believe that he might be expelled, and indeed that the Headmaster had told the appellant that he would probably expel him or take some action or something to that effect.

Nevertheless the Judge held that this was not enough to satisfy the requirements of natural justice and that it was the duty of the Headmaster at the time of questioning the appellant to inform him specifically that he would be expelled if he did not provide a satisfactory explanation.

Upon this sole ground, the Judge made a Declaration that the order of expulsion of the appellant was null and void and of no effect.

On appeal to the Federal Court of Malaysia, that Court by a majority (Suffian A.L.P. and Gill F.J., Ali F.J. dissenting) reversed this decision and held that the procedure adopted by the Headmaster was in accordance with the rules of natural justice. Ali F.J. was in favour of affirming the judgment of the High Court, for the reason given by Abdul Hamid J.

On appeal to the Judicial Committee, the appellant has relied mainly upon the ground which commended itself to Abdul Hamid J. and Ali F.J., but he also seeks to support the conclusion which they reached that the rules of natural justice had been contravened on two additional grounds. The first is that the appellant should have been given an opportunity to consult his parents before answering the Headmaster's questions at the interview on 2nd April 1968; the second is that, after that interview and before reaching his final decision on 10th April, the Headmaster had taken into account another instance of misconduct by the appellant which had occurred before he had become Headmaster and which was reported to him for the first time when he was obtaining the views of his fellow teachers.

In their Lordships' view, there is no substance in the contention that the rules of natural justice required the Headmaster to tell the appellant specifically at the interview on 2nd April that he intended to expel him unless the appellant gave a satisfactory explanation of the misconduct which was the subject of the interview. All that those rules require is that, in deciding whether to expel the appellant he should act fairly by letting him know what conduct was complained of and giving the appellant an opportunity of proffering any explanation or excuse he wished to put forward.

The appellant, as the learned trial judge found, knew at the time of the interview that he ran the risk of expulsion. In their Lordships' view, the suggestion that anything more than this was required by the rules of natural justice is wholly untenable.

The alternative suggestion that this youth of seventeen should not have been questioned about his misconduct at school without an opportunity of first consulting his parents does not appear to have loomed large in the argument in the Federal Court and is not specifically referred to in the judgments. In their Lordships' view, it too is without substance. The appellant was old enough to know what excuses, if any, he had for what he had done. No one knew better. All that the rules of natural justice required was that he should be given an opportunity of stating them.

Finally, as respects the report of previous misconduct which came to the attention of the Headmaster after the interview of 2nd April and before he had finally decided to expel the appellant, the appellant, at the time this misconduct was discovered, had been given a full opportunity to explain it. It was a straightforward instance of disobedience of the same general kind as that with which he had been taxed at the interview. In their Lordships' view, as the appellant had already been given an opportunity to explain this piece of misconduct at the time that it occurred, there was no obligation upon the Headmaster to put it to him again and invite a further explanation.

In relation to such administrative matters as the expulsion of a pupil from a school it would be quite inappropriate to model the procedure on that of a criminal trial. All that natural justice requires is that the person charged with making the decision should act fairly. What is fair depends on the circumstances and is a matter of commonsense. Their Lordships consider that there was no sort of unfairness in the course adopted by the Headmaster in relation to the appellant. They will accordingly advise the Head of Malaysia that the appeal should be dismissed with costs.

In the Privy Council

N. MAHADEVAN (LATELY AN
INFANT BUT NOW OF FULL AGE)

v.

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DELIVERED BY
LORD DIPLOCK