SIMON ATOI AND OTHERS -v- INTERIM BOARD OF GOVERNORS (ADAUA SECONDARY SCHOOL) AND ATTORNEY GENERAL

High Court of Solomon Islands
(Palmer J.)
Civil Case No. 314 of 1992
Hearing: 13 October 1993
Judgment: 14 January 1994

M.B. Samuel for Appellant
D. Philips for the First Respondent

PALMER J: In this application there were originally seven applicants seeking orders of certiorari and mandamus against the First Respondent. At the hearing at Auki on the 13th October 1993 however, only two applicants appeared to pursue their case; Samson Fenigoulu and Bendick Baetoea. The other 5 applicants failed to appear and accordingly their claim was struck off on the same date. (From hereon the word 'applicants' refers only to Bendick Baetoea and Samson Fenigoulu).

The applicant's claim related to their dismissal by the First Respondent from Adaua Secondary School on or about the 2nd of May 1992. The main reason being that they were some of the key persons in the organisation of the demonstration held by some boys from the school on the 28th of April 1992.

The brief facts of the case are as follows. On or about the 28th of April 1992, about 87 male students of Adaua Secondary School took part in a demonstration march from the school to the Malaita Province Administration Centre at Malu'u. This covered a distance of approximately 14 kilometres. On arrival at Malu'u a letter was handed to the Administrative Officer stationed there. That letter contained eleven complaints which formed the basis of their grievances and resulted in the demonstration march which took place that day. Naturally it seems, everybody around that place was shaken by the incident.

The Senior Education Officer and the Regional School Inspector, together with the Officer in Command of Malu'u Police Station, were able to calm the students down and

then to persuade them to return to school. Two police officers were left overnight at the school to ensure that no further incident would occur.

On the 29th of April 1992, the very next day, a group of persons went to the School to carry out further investigation into the demonstration. These included: the Principal Education Officer, the Senior Education Officer (S), Education Officer (C), Senior Education Officer (N), Regional School Inspector (N), and the Administrative Officer (N).

After the first investigation, thirteen boys were identified as the ring leaders of the demonstration. These included the Applicants. They were suspended indefinitely while the matter was forwarded to the Interim Board of Governors to deliberate on their fate. The members of the Interim Board of Governors of Adaua Secondary School consisted of, David Oeta (Premier of Malaita Province) and the Chairman; Jack Watealaha (Deputy Provincial Secretary) as a member; Henry Awa (Provincial Treasurer) as a member; Uriel Mudu (Principal Education Officer) as secretary; Martin Anta (School Principal) as a member; and Penuel Idusulia (Chaplain) also as a member. The first meeting of the Board was held on the 12th of May 1992. Also in attendance at the meeting was the Deputy Principal, Benedict Esibaea. A copy of the minutes of that meeting is attached to the affidavit of Jack Watealaha, filed on the 5th of February 1993 at pages 7 to 13.

It was at that Board meeting that the decision was taken to expel the Applicants, together with the other five. Three students were given further suspension period of another thirty days, and the remaining three were admitted back to school with immediate effect.

The thrust of Mr Wasiraro's submission is that the applicants were not given the opportunity to be heard before the decision for their expulsion was made. This he says amounted to a breach of natural justice and accordingly, the decision should not be allowed to stand.

In response to this, Mr Philips, learned Counsel for the First Respondents, submitted that there was no such breach. He pointed out that when the students arrived at the Malu'u Station, the Senior Education Officer (North) consulted with the students over their alleged complaints. At paragraph 4 of Uriel Mudu's affidavit he stated that the SEO (N) did invite the leaders of the demonstration into the Administration Building at Malu'u and they were asked to elaborate upon the grievances which they had set out in the letter handed to him. Those present at that time were also the Regional School Inspector, the Administrative Officer and the Clerk to the Council. Mr Philips submits that the contents of those discussions were subsequently passed to the Principal

Education Officer and they formed part of that officers final report to the Board of Governors. He submits therefore that it is not correct to say that the students were never given an opportunity to have their views heard.

Mr Philips' second submission is that the students had committed a clear act of public disorder and therefore it was proper for the Board of Governors to expel the seven students.

There are two distinct issues that should be clearly identified. First, is the issue about the petition; the grievances of the students as contained in their letter presented to the Senior Education Officer at Malu'u on the 28th April 1992. Second, is the issue about the demonstration which occurred on the same date.

There is nothing wrong or illegal about the complaints raised by the students. Students are notorious for making or raising complaints. What seems to have raised the eyebrows of all those concerned in dealing with the complaints is in the way those complaints were brought to the attention of the appropriate authorities. Had the complaints been delivered by way of a letter to the appropriate authorities, say by delivery by one of the students, or say delivery to the School Principal, then no serious disciplinary action would have been considered.

The reason why the appropriate authorities were so up in arms against the students, was because of the way the students had gone about making their complaints known. They broke all school rules and discipline, when they went on the march from Adaua School to Malu'u station. Not only was it a blatant breach of the school rules, but it was tantamount to an unlawful act of public disorder, as submitted by Mr Philips. It is not disputed, or rather no challenge was raised, to say that the march was proper. It is clear that no permission was obtained from the appropriate authorities to sanction the march. Everybody it seems was taken aback and made apprehensive by the march, and the police had to be called in to ensure that no further breaches or possible breaches of the law was committed.

It is important to make the distinction here clear, that we are dealing with a disciplinary body (the Interim Board of Governors) taking disciplinary action against a group of students for what can be regarded as improper or outrageous behaviour. We are not dealing primarily with the issue of the complaints of the students. The complaints raised do not warrant any disciplinary action against the students. Rather, what has been done inrespect of them was for an investigation to be conducted and the Principal of the School given an opportunity to rebut the allegations raised, or provide an explanation. From pages 5-6 of the exhibit marked 'JW1', annexed to the affidavit

of Jack Watealaha, and filed on the 6th of February 1993, is a copy of the Principal's response to the allegations of the students.

It is clear to me also that in respect of those allegations, the students were given sufficient opportunity to elaborate further on them before the SEO (N), the RSI and the Administration officer, at Malu'u on the 28th of April 1992. I accepted as submitted by Mr Philips that there has been no breach of natural justice inrespect of those complaints.

However, the breach of natural justice raised, referred to the decision of the Interim Board of Governors to expel the applicants for taking part in the demonstration on the 27th of April 1992. The decision of the Board clearly had an adverse effect on the education of the applicants.

In H.W.R. Wade's Administrative Law, Sixth Edition at page 520 quoting Lord Diplock in the House of Lords in O'Reilly -v- Mackman [1983] 2 AC 237 at 276, his Lordship said, *"that the right of a man to be given a fair opportunity of hearing what is alleged against him and of presenting his own case is so fundamental to any civilised legal system that it is to be presumed that Parliament intended that a failure to observe it should render null and void any decision reached in breach of this requirement."*

Further down at page 520 the learned author stated:

> *"The classic situation in which the principles of natural justice apply is where some legal right, liberty or interest is affected, for instance where a building is demolished or an office-holder is dismissed or a trader's licence is revoked. But good administration demands their observance in other situations also, where the citizen may legitimately expect to be treated fairly."*

And at page 529 and 530, the learned author continued:

> *"Ridge -v- Baldwin reinstated the right to a fair hearing as 'a rule of universal application' in the case of administrative acts or decisions affecting rights: and, in Lord Loreburn's oft-repeated words, the duty to afford it is 'a duty lying upon every one who decides anything'. The decision gave the impetus to a surge of litigation over natural justice, in which the courts have been able to consider many of its facets and to build up something like a canon of fair administrative procedure. For the most part the numerous decisions have served only to show the correctness of the above-quoted words, sweeping though they are. Natural justice has achieved something like the status of a fundamental right.*

For example, the courts have repudiated earlier suggestions that the principles of natural justice do not apply to disciplinary bodies: 'they must act fairly just the same as anyone else; and are just as subject to control by the courts'. Disadvantaged groups such as prisoners and immigrants have succeeded in invalidating decisions made against them when they have not been treated fairly - though there was for a time an illogical exception in the case of prisoners, mentioned later. At the other end of the spectrum of power, public authorities themselves are now given the benefit of natural justice, as illustrated at the end of this section. Basically the principle is confined by no frontiers.

On the other hand it must be a flexible principle. The judges, anxious as always to preserve some freedom of manoeuvre, emphasise that 'it is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter'. 'The so-called rules of natural justice are not engraved on tablets of stone.' Their application, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. 'In the application of the concept of fair play there must be real flexibility.' There must also have been some real prejudice to the complainant: there is no such thing as a merely technical infringement of natural justice."

The first crucial question before me is: is the Interim Board exempted from this rule of natural justice? Mr Philips has not sought to challenge this issue. Rather he acknowledges that no man should be condemned unheard. In his submissions before this court, he has taken the line that no breach of this rule had been committed.

This then brings me to the second crucial question. Has there been a breach of the audi alteram partem rule?

With respect, there is no evidence before me to show that the applicants were ever given a hearing about the decision of the Interim Board of Governors to expel them for participating in the demonstration.

In both meetings of the Board on the 12th of May 1992 and 26th of May 1992, the Applicants were not given any opportunity to make any representations; neither were any personal representatives on their behalf given an opportunity to be heard. On the 26th of May 1992, a Student Representative, Wilfred Fatai was present in the Board meeting. However, that meeting only dealt primarily with the allegations that had been raised earlier by the male students taking part in the demonstration. Secondly, I am not satisfied that the representation of Wilfred Fatai was inrespect of the dismissal of the

Applicants from School. I am not satisfied that his representation can be regarded as sufficient.

The fact that the demonstration in which the applicants took part in was tantamount to public disorder as claimed by Mr Philips does not alter the fact that they are entitled to be heard before such dismissal was effected. It does seem to me that most of the information obtained were from what others had said, including their teachers and other fellow students. But at no time it seems were the Applicants given an opportunity to be heard about the part they played in the demonstration, or any explanations given, if any. It is not disputed that the Applicants took part in the demonstration. But they were not the only ones. There were about 80 others who participated with them. If they were considered to be the main initiators, or the ring leaders, and taken together with all other relevant or irrelevant factors, inrespect of their academic performance and general behavioral reports from their school teachers, and it was contemplated by the Board that they should be expelled, then they should at least be given an opportunity to be heard.

The Board may have felt that it has acted in as best a manner they could, by considering all relevant factors. Unfortunately, they had failed to give the applicants an opportunity of being heard. This is a procedural matter. And the effect of such failure is to render the decision of the Interim Board of Governors, null and void, irrespective of whether they may felt that it was the proper thing to do.

At page 533 of H.W.R. Wade's book, Administrative Law, Sixth Edition, the learned author states:

> *"Procedural objections are often raised by unmeritorious parties. Judges may then be tempted to refuse relief on the ground that a fair hearing could have made no difference to the result. But in principle it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be prejudged unfairly. Lord Wright once said:*
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> > *If the principles of natural justice are violated in respect of any decision it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision."*

And also quoting *Megarry J in the case of John -v-Rees [1970] Ch. 345 at page 402;*

> *"As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of*

unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change."

And finally at page 535, the learned author made the following pertinent comments:

"Judges are naturally inclined to use their discretion when a plea of breach of natural justice is used as the last refuge of a claimant with a bad case. But should not be allowed to weaken the basic principle that fair procedure comes first, and that it is only after hearing both sides that the merits can be properly considered. A distinction might perhaps be made according to nature of the decision. In the case of a tribunal which must decide according to law, it may be justifiable to disregard a breach of natural justice where the demerits of the claim are such that it would in any case be hopeless. But in the case of a discretionary administrative decision, such as the dismissal of a teacher or the expulsion of a student, hearing his case will often soften the heart of the authority and alter their decision, even though it is clear from the outset that punitive action would be justified. This is the essence of good and considerate administrator, and the law should take care to preserve it."

Is the applicant's case a bad one or a hopeless one? I do not necessarily think so. The applicants should at least in my view be given an opportunity to be heard before such action, as to their expulsion whether justifiable or not is taken.

The effect of this judgment means that the decision to expel the Applicants, Bendick Baetoea and Samson Fenigoulo is null and void. The Applicants accordingly, are effectively still under suspension.

On the question of relief, the Applicant, Samson Fenigoulo seeks ultimate re-instatement at the School. That question will have to be made by the Board of Governors when it meets to consider its decision after giving this applicant an opportunity to be heard.

The applicant, Bendick Baetoea seeks a refund of school fees and some compensation. That is beyond the powers of the court and that issue has never been pleaded. The only order that this court can make is to direct the Board of Governors to give this applicant an opportunity of being heard before the decision whether to expel or not is considered. I suggest the Board of Governors also should give notice to this applicant as to the date it will convene to consider Samson Fenigoulo's case and give this applicant an opportunity also to be heard. If this applicant fails to turn up (provided notice has been given) then the Board can go ahead and make its decision accordingly.

The orders of the Court accordingly are:

(I) The decision of the Interim Board of Governors of Adaua Secondary School made on the 12th of May 1992 and subsequently ratified by the Education Authority (Malaita Province) to expel the applicants, is hereby quashed.

(II) The Board of Governors of Adaua Secondary School and/or the Education Authority (Malaita Province) is hereby directed to reconvene within 30 days of this judgment date or as soon as is reasonably practicable thereafter, to re-consider its decision whether to expel or to re-admit the Applicants, provided that an opportunity to be heard be first given to them or their legal representatives.

Costs if any to be borne by the First Respondent.

(A.R. Palmer)
JUDGE