A.M.E. FERNANDO

v

THE ATTORNEY-GENERAL

SUPREME COURT
S.N.SILVA, CJ.
EDUSSURIYA, J. AND
YAPA, J.
SC (FR) 55/2003
2ND JUNE, 2003

Fundamental Rights – Ex facie curiae – Contempt of court – Power of Supreme Court – Constitution, Article 105(3) – Grossly irregular behaviour against authority of court – Disturbing proceedings of court – Summary punishment without trial – Motion for review of punishment.

The petitioner an employee of the Y.M.C.A. had a fall and suffered injuries during employment. He sought compensation. The Deputy Commissioner of Workmen's Compensation held an inquiry in the course of which the dispute was settled for the payment of Rs.4947/- to the petitioner by the Y.M.C.A. However, the petitioner refused to accept that sum which had been deposited with the Commissioner. The petitioner walked out threatening to file a fundamental rights case. He then complained to the Human Rights Commission (the HRC). After obtaining the observations of the Commissioner the HRC declined to proceed with the application.

Thereafter, the petitioner complained to the Ombudsman who consulted the Judicial Service Commission ("the JSC). The JSC informed that it had no power to grant relief as it was a judicial order in respect of which relief should be sought before a higher court.

Next, the petitioner filed four fundamental rights cases.

(1) Against the Attorney-General and the Deputy Commissioner of Workmen's Compensation for failure to vacate the settlement by the Deputy Commissioner.

(2) Against the Attorney-General and the Ombudsman with the same material but without specifying the right which was infringed.

(3) Against the Attorney-General, the JSC, the Registrar of the Supreme Court ("the RSC") for alleged failure to list certain motions but without setting out the fundamental right which was infringed.

(4) SC(FR) 55/2003 against the Attorney-General, the JSC and its Chairman, the RSC and two of the Judges of the Supreme Court who had dismissed the 1st and 2nd petitions above named on the ground that the court had no jurisdiction regarding the impugned order as it was a judicial order.

The 3rd application had been dismissed for want of compliance with the Rules of the Court and for want of material to substantiate the petitioner's complaint.

The Y.M.C.A. had not been made a party to these applications.

In SC (FR) 55/2003 the petitioner appeared in person. When the court explained to him the reasons for his failure in the earlier cases and that he was acting in abuse of the process of court in persisting in filing more applications, the petitioner raised his voice and said in loud language that he should be allowed to proceed with the case. He persisted in disturbing the proceedings of court from the bar table, in spite of a warning that he may be dealt with for contempt; whereupon, the court made order dated 6.2.2003 finding him guilty of contempt and sentenced him to 1 year RI.

Held :

1. Where a person is guilty of gross misbehavior in court and disturbs the proceedings it constitutes "*ex facie curiae*" (contempt in the face of court) for which he is liable to be summarily judged and punished, without a formal charge.
2. There is an absence of expression of regret with an undertaking that the petitioner would not repeat such conduct even though the petitioner's counsel was himself informed of such requirements, to consider mitigation. As such there are no grounds for mitigating the impugned order or the punishment.
3. The motion for review of the impugned order should be refused.

Per S.N. Silva, CJ

"I would cite the words of Lord Denning referred to above "to maintain law and order the judges have and must have the power *at once* to deal with those who offend against it. It is a great power – a power *instantly* to imprison a person without trial – but it is a necessary power."

Cases referred to :

1. *A.G.* v *Times Newspaper Ltd (HL)* (1974) AC 273, 302
2. *Morris* v *Crown Office* (1970) 1 AER 1079

APPEAL from the Order of the Supreme Court dated 6.2.2003.

Elmore Perera with *Buddhika Kurukularatne* and *D. Senaratne* for petitioner.

Cur.adv.vult

July 17, 2003

SARATH N SILVA, C.J.

A petition has been presented seeking a review of the judgment dated 6.2.2003. We heard submissions of counsel on 2.6.2003 and reserved the order in respect of the petition.

It is necessary at this stage to set down the facts relevant to the matter in brief. The petitioner was an employee of the Young Mens' Christian Association (Y.M.C.A.) as its Secretary attached to the Dehiwala Branch and later the Colombo Central Branch. Whilst engaged in that employment he had a fall and suffered certain injuries. He filed an application in terms of Workmens' Compensation Act for redress in respect of the injuries that were suffered by him. The Deputy Commissioner, Workmens' Compensation held an inquiry into the petition. The petitioner and the Y.M.C.A. were represented by attorneys-at-law. On 22.10.1997, a settlement was entered into between the parties before the Deputy Commissioner of Workmens' Compensation, in terms of which the petitioner was to be paid a sum of Rs.4947/- in lieu of his claim, by the Y.M.C.A. When the matter was called before the Deputy Commissioner on 9.1.1998, the petitioner refused to accept the money which was deposited with the Commissioner. The Deputy Commissioner has in letter dated 27.5.1998, filed by the petitioner stated that the petitioner refused to accept the money and walked out stating that he would file a "fundamental rights case" against the Deputy Commissioner of Workmen's Compensation.

Thereafter the petitioner made a complaint to the Human Rights Commission of Sri Lanka, in respect of the proceedings before the Deputy Commissioner of Workmens' Compensation. The Commission called for the observations of the Deputy Commissioner of Workmens' Compensation and after considering the available material by letter dated 31.1.2001 informed the

petitioner that the Commission "is unable to proceed with the complaint in terms of the powers vested in it by the Human Rights Commission of Sri Lanka Act, No.21 of 1996".

It is to be noted that in this complaint the petitioner makes no reference to the Y.M.C.A. being the organization in respect of which he originally sought relief from the Commissioner of Workmens' Compensation.

Thereafter the petitioner made a complaint to the Ombudsman stating *inter alia* that there should be a public apology given to the petitioner by the Deputy Commissioner of Workmens' Compensation and the Human Rights Commission of Sri Lanka. The Ombudsman having sought the views of the Judicial Service Commission informed the petitioner that no relief can be granted in the matter.

The Judicial Service Commission informed the Ombudsman that it has no power to grant relief by way of an appeal, revision, review or otherwise with regard to a matter pending before a court or a tribunal or to be decided before a court or tribunal and that any such relief can only be obtained upon an appropriate appeal to the High Court according to law.

Thereafter the petitioner commenced the process of filing applications in this court. He filed four applications in all. They are S.C.(FR) 644/02, S.C(FR) 645/02 and S.C.(FR) 721/02 and S.C.(FR) 55/03.

1. S.C.(FR) 644/2002 is against the Hon. Attorney-General and the Deputy Commissioner of Workmens' Compensation. It is a complaint that the settlement entered into before the Deputy Commissioner should have been vacated and that by the failure to vacate the settlement the Deputy Commissioner has infringed the petitioner's fundamental rights guaranteed by the Constitution. The papers filed by the petitioner are not in order and do not specify even the fundamental right that is alleged to have been infringed by the Deputy Commissioner of Workmens' Compensation. It is seen that the petitioner has filed an affidavit and a series of documents with regard to the entire matter.

2. S.C.(FR) 645/2002 is filed against the Hon. Attorney-General and the Ombudsman which contains a photocopy of the same affidavit and another series of documents without any reference to the petitioner's fundamental right which has been infringed by the Ombudsman.

3. S.C.(FR) 721/2002 has been filed by the petitioner against the Hon. Attorney-General, the Registrar of this court and the Chairman, Judicial Service Commission. There is no petition in this case and no mention is made of the specific fundamental right that these respondents are alleged to have infringed. It is stated in the affidavit that the petitioner complained to the Judicial Service Commission to direct the Registrar, Supreme Court to list certain motions before the court and he has failed to do so.

It is to be noted that the petitioner has not made any reference to any grievance that he has with the Y.M.C.A. in any of the above applications. The Y.M.C.A. is not made a respondent in these applications and the petitioner's complaints are only in respect of the officials who have dealt with his complaint against the Y.M.C.A. The petitioner is therefore not prosecuting the relief he originally sought from Commissioner of Workmens' Compensation. His grievance is now turned against the officials, who merely stated that they cannot intervene in the settlement that he entered into with the Y.M.C.A.

S.C.(FR) 644 & 645/2002, came for support before the Chief Justice, Justice J.A.N. de Silva and Justice T.B. Weerasuriya, on 27.11.2002, and the petitioner appeared in person. The court entered the following judgment after hearing the petitioner. Since the petitioner's subsequent complaint stems from this judgment I would reproduce here the entirety of what has been recorded and signed by the judges.

> "In both matters the complaint is substantially in respect of an order made by the Deputy Commissioner of Workmen's Compensation. This is a judicial order which does not attract the provisions of Articles 17 and 126 of the Constitution. The complainant has a right of appeal to the High Court. The complainant admits that he did not appeal from the impugned order.
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> In the circumstances the complaint is rejected."

S.C.(FR) 721/2002 came up for hearing on 14.1.2003 before Justice Shirani A. Bandaranayake, Justice P. Edussuriya and Justice J.A.N. de Silva. The petitioner appeared in person and the Court noted for reasons stated that there is no material before the Court to substantiate any of the submissions made by the petitioner that, there has been no compliance with the Supreme Court Rules in presenting the application and the application was accordingly dismissed.

Thereafter the petitioner filed S.C.(FR) Application No. 55/2003, the 4th application, being the present case. This was filed on 30.1.2003, naming the Hon. Attorney-General, Secretary, Judicial Service Commission, Chairman, Judicial Service Commission, the Registrar of this Court, the Chief Justice and the other two Judges who decided in S.C. (FR) 644/02 and 645/02 as respondents.

The petitioner alleges that the respondents have infringed his fundamental rights guaranteed under Article 12(1) of the Constitution by not permitting him to support S.C.(FR) 644/02 and S.C.(FR) 645/02 separately. It appears that the complaint of the petitioner is that these two applications were considered together and one judgment was given encompassing both cases. This application came up before the present Bench on 6.2.2003. The petitioner was informed that he cannot persist in filing applications of this nature without any basis and abusing the process of this Court. At that stage the petitioner raised his voice and insisted on his right to pursue the application. He was then warned that he would be dealt with for contempt of Court if he persists in disturbing the proceedings of Court. Inspite of the warning the petitioner persisted in disturbing the proceedings of the Court from the bar table of the Court. At this stage for the reasons recorded in the judgment dated 6.2.2003, the petitioner was sentenced to 1 year R.I for the offence of committing contempt of Court.

Learned Counsel for the petitioner supported this application for review on 2 grounds-

i. that no charge was read to the petitioner before he was convicted for contempt of Court and sentenced in the manner stated above;

ii. that in any event the sentence is excessive;

Learned Counsel also submitted that the matter should not be heard by the same Judges since they are biased.

It is clear that the submissions have been made on a misconception of the law relating to contempt of Court and the procedure applicable in respect of different categories of contempt. Article 105(3) of the Constitution vests the Supreme Court, which is a superior court of record, in addition to the powers of such Court

> "the power to punish for contempt of itself whether committed in the court itself or elsewhere, with imprisonment or fine or both, as the Court may deem fit".

This provision of the Constitution is based on the common law, which draws a distinction in what is described as criminal contempt between, those committed in the face of the Court "*In facie curiae*" and, those committed outside court "*ex facie curiae*" The inherent jurisdiction of the Superior Courts of England to impose punishment summarily in respect of contempt in *facie curiae* is set out in "Oswald's *Contempt of Court*" 3rd Ed. Page 8, as follows;

> "It is now the undoubted right of a Superior Court to commit for contempt. The usual criminal process to punish contempts was found to be cumbrous and slow, and therefore the Courts at an uncertain date assumed jurisdiction themselves to punish the offence summarily, *brevi manu*, so that cases might be fairly heard, and the administration of justice not interfered with. A Court of Justice without power to vindicate its own dignity, to enforce obedience to its mandates, to protect its officers, or to shield those who are entrusted to its care, would be an anomaly which could not be permitted to exist in any civilized community. Without such protection Courts of Justice would soon lose their hold upon the public respect, and the maintenance of law and order would be rendered impossible. Hence it is that the summary power of punishing for contempt has been given to the Courts."

The authority cited in Oswald is the case of *R* v *Almon* decided in the year 1765.

The basis of exercising jurisdiction in respect of contempt of court, in general has been clearly stated in the judgment of Lord Morris of the House of Lords in the case of *A.G.* v *Times Newspaper Ltd.*(1) as follows:

> "...the phrase contempt of court is one which is compendious to include not only disobedience to orders of a court but also certain types of behaviour or varieties of publications in reference to proceedings before courts of law which overstep the bounds which liberty permits. In an ordered community courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interests of the community it is imperative that the authority of the courts should not be imperiled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering justice are concerned for their own dignity: it is because the very structure of ordered life is at risk if the recognized courts of the land are so flouted that their authority wanes and is supplanted. ..... Grossly irregular behaviour in court could never be tolerated."

Morris v *Crown Office*(2) is a specific case of contempt *in facie curiae* involving an instance of disturbance of Court proceedings where the persons responsible for causing the disturbance being eleven students were summarily dealt with and imposed terms of imprisonment. Lord Denning MR, dealing with the summary imposition of terms of imprisonment stated as follows - at page 1081-

> 'In sentencing them in this way the judge was exercising a jurisdiction which goes back for centuries. It was well described over 200 years ago by Wilmot, CJ in an opinion which he prepared but never delivered. He said :
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> '...It is necessary incident to every Court of justice to fine and imprison for a contempt to the Court, acted in the face of it...'
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> That is *R* v *Almon*. The phrase 'contempt in the face of the court' has a quaint old-fashioned ring about it; but the importance of it is this; of all the places where law and order must

be maintained, it is here in these courts. The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society. To maintain law and order, the judges have, and must have, power at once to deal with those who offend against it. It is a great power - a power instantly to imprison a person without trial - but it is a necessary power."

It is thus seen that the power of a superior Court to deal with summarily instances of contempts committed *in facie curiae* is firmly entrenched in the common law of England with judicial dicta of the highest authority that date back over 200 years. In Sri Lanka this power is given firm recognition in being written into the Constitution, the Supreme Law of the land. When the Court exercises jurisdiction summarily, the formalities that attend the exercise of jurisdiction in a normal criminal matter, such as the framing of a charge, the recording of a plea and the conduct of a trial or inquiry are dispensed with. Learned Counsel made his submission regarding the need to frame a charge ignoring this basic characteristic of exercising jurisdiction summarily in respect of contempt committed in the face of the Court. It would indeed make a mockery of judicial proceedings if a person who continues to disturb the proceedings in Court after being warned that he would be dealt with, is to have a charge read against him and questioned whether he pleads guilty or not guilty. It is for this reason that jurisdiction is exercised summarily. I would cite the words of Lord Denning referred to above, "to maintain law and order the Judges have and must have, power at *once* to deal with those who offend against it. It is a great power - a power *instantly* to imprison a person without trial - but it is a necessary power."

The petitioner appeared in person and is entitled to a degree of latitude by the Court. The warning given that he would be dealt with if he persists in continuing to disturb the proceedings of Court is a measure of the latitude that was shown. In fact he continued to disturb the proceedings of Court even after the sentence was imposed. He finally stopped the continued unruly behaviour only when he was firmly informed that any further disturbance of the Courts proceedings would be dealt with as another offence of contempt of court.

The course of action taken by this Court in dealing with the petitioner who appeared in person is entirely in accord with the following passage in "Oswald on Contempt of Court" 3rd Edition at page 54-

> "Although considerable latitude has been allowed, especially in more recent times, to parties conducting their causes in person, in consequence of their ignorance of the forms of procedure, this indulgence should not be extended to permit them to continue an improper course of conduct after warning from the Judge, nor to use unbecoming or abusive language."

Therefore we see no merit whatsoever in the first ground urged by Counsel that a charge should have been read to the petitioner before he was punished for committing contempt in the face of the Court.

The second ground relates to the sentence that has been imposed. In this regard I would begin by citing the words of Lord Morris referred to above. "In an ordered community courts are established for the pacific settlement of disputes and the maintenance of law and order." The proceedings in our Courts come well within this description. The proceedings of our Superior Courts are conducted without the presence of any police or security personnel, armed or otherwise. The only official being a stenographer who represents the Registrar. Hundreds of litigants and members of the public come daily to our Courts and conduct themselves with admirable decorum. Counsel conduct themselves generally with dignity that befits their office except in the case of an individual who may be considered an anachronism. It is clear from the preceding narrative of the facts that the petitioner did not come to this Court for a "pacific settlement" of any dispute. His dispute is with the Y.M.C.A. which is not even cited as a party to any of the four applications the petitioner filed in this Court. He filed these applications only to implead the judicial officer and the Ombudsman who merely stated the obvious that they cannot intervene to set aside a settlement he had entered into with the Y.M.C.A. To cap it all, he filed the last case against the Judges of this Court who merely stated the obvious, that jurisdiction cannot be exercised in terms of Articles 17 and 126 of the

Constitution (fundamental rights jurisdiction) in respect of judicial action.

It was pointed out to counsel that in every case a judge has to decide a matter in favour of one party and against the other. And, if a party against whom a decision is given is to implead the judge in respect of such decision, every judge would have as many cases against him as the number decided by him. This depicts the preposterous nature of the application filed by the petitioner which by itself is in contempt of the authority of this Court.

Counsel at one stage contended that S.C (FR) 55/03 filed by the petitioner against the Registrar, the Chief Justice and the other Judges does not disclose any infringement of a fundamental right and should have been rejected in chambers by the judges. At a later stage he contended that the Chief Justice should not have sat on the bench, since he is named as a respondent in the papers that should have been rejected in chambers. These submissions are a conundrum of absurdity which do not require any further consideration by this Court.

As noted above, the very act of the petitioner in filing this application against the Registrar and the Judges who heard his previous cases is in contempt of the authority of this Court. When the case was called the petitioner walked upto the bar table, placed his files on the lectern provided for counsel and continued to address Court in a loud voice not heeding the warning that was given. He thus came determined to defy the authority of the Court and to cause the maximum possible disturbance in the process and certainly not to seek a pacific settlement of the dispute he had with the Y.M.C.A which was not even named as a party respondents to the application. We are therefore of the view that the sentence of 1 year was warranted in the circumstances of this case. We have been inclined at every stage to mitigate this sentence if the petitioner expressed regret and gave a firm undertaking that he would not disturb the proceedings of Court at any stage in the future. The petitioner has very clearly refrained from expressing any regret even in the papers filed seeking review. Counsel was informed by Court that the hearing could be adjourned to enable him to obtain instructions from the petitioner on the matter of expressing regret and seeking a mitigation of the sentence on that basis. Counsel

specifically declined to take an adjournment for this purpose and concluded his submissions. In these circumstances we see no basis to consider a mitigation of the sentence that has been imposed. The motion for review is accordingly refused.

EDUSSURIYA, J. - I agree.

YAPA, J. - I agree.

Motion for review refused.