PRIYANGANI NAVARATNE AND OTHERS
v.
CHANDRASENA

SUPREME COURT
FERNANDO, J.,
AMERASINGHE, J. AND
GUNASEKERA, J.
S.C. APPLICATIONS 172–179/97
DECEMBER 4TH, 1997.

Fundamental rights – Ragging – Punishment of offenders violative of Article 12 (1) of the Constitution – Adequacy of punishment – Discretion of Court to refuse relief to offending petitioners.

Petitioners were teacher trainees at the Nilwala Educational College. They were found guilty of ragging freshers which required the victims to be admitted to hospital for treatment. The petitioners were given an opportunity of showing cause against that finding after which the finding was affirmed and their internships were suspended; for one month in the case of females, and for two months in the case of males. The petitioners resumed internship after the period of suspension. Next, there was a further inquiry after which the male petitioners were informed that they had been expelled from the college, and the female petitioners were informed that their internship had been extended for a further period of one year.

Held:

The petitioners' fundamental rights under Article 12 (1) were infringed by reason of the second punishment for the same offence and the antecedent procedure. However, their conduct amounted cruel, inhuman and degrading treatment of the victims; the original punishments were therefore, lenient and wholly inadequate. Therefore, in the exercise of the courts discretion apart from a bare declaration, no relief should be granted, for restoring the original punishments.

Per Fernando, J.

> "Ragging is sometimes sought to be justified as being a necessary part of orientation to life in Universities and other Institutions of higher learning. Such ragging may be tolerated, if at all, if it is clean fun; but it is totally unacceptable if it causes pain or suffering, or physical, mental or emotional distress, to the victims."

APPLICATION for relief for infringement of fundamental rights.

Chula Bandara for the petitioners.

S. Fernando, SC for the respondents.

Cur. adv. vult.

December 16, 1997.

FERNANDO, J.

These eight applications were heard together. All eight petitioners were admitted to the Nilwala Educational College on 28.3.94 (for a three-year course 1994/97) for the purpose of being trained as teachers. The petitioners in the first three applications are females, while the other five are males.

On 9.10.95 a new batch of trainees was admitted for the next course, 1995/98. According to the petitioners:

> "On the afternoon of 9.10.95 which was a Saturday, all trainees including seniors and juniors were playing at the College play ground. While at play, ***the senior trainees*** separated the newcomers into groups according to their sex. Thereafter ***the seniors*** made them to march along the grounds. After some time, the female trainees were allowed to rest while the male trainees were asked to do certain physical exercises while ***the seniors*** looked on. This group of male students were made to roll over and back several times by ***the senior students.*** While this was happening, a few freshers complained of dizziness and pain ***due to exhaustion.*** These trainees who complained were then taken to the Akuressa Government Hospital in the College bus and were warded for treatment. All these trainees were discharged from hospital the following day".

It is clear that this was a collective effort, in which *all* the seniors were involved, and the petitioners did not suggest that their involvement was in any way less than that of the other seniors.

On 30.11.95 each petitioner received a letter from the 1st respondent, the President of the College, stating that the Disciplinary Committee of the College had found her/him guilty of ragging the newcomers, and giving her/him an opportunity to show cause in regard to that finding. The petitioners submitted explanations denying any

involvement in the ragging of the newcomers. That denial is contrary to their affidavits filed in this Court.

The petitioners were due to serve one-year internships commencing 1.1.96. By letters dated 21.12.95, the 1st respondent informed the petitioners that they had been found guilty of ragging, and that their internships were suspended: for one month in the case of the females, and for two months in the case of the males. They submitted appeals against the punishments, and commenced their internships after the period of suspension.

By a Circular dated 7.10.96 the 2nd respondent, the Secretary to the Ministry of Higher Education, amended the Disciplinary Code of the College, to make specific mention of ragging, and to give the 2nd respondent powers and responsibilities in regard to offences of ragging.

In the meantime, there seems to have been a further inquiry, after which, by letters dated 8.1.97 the male petitioners were informed that they had been expelled from the College, and by letters dated 13.1.97 the female petitioners were informed that their internship had been extended for a further one year, for breach of the terms and conditions of the agreement they had signed when they joined the College.

The petitioners filed these applications on 12.2.97 alleging the violation of their fundamental rights under Article 12 (1), on the ground that the punishment imposed in January 1997 was a second punishment for the same offence; that it was arbitrary; that the *audi alteram partem* rule had not been observed before imposing that punishment; and that the amendment of the Disciplinary Code was retrospectively applied to them, although it contained no express provision making it retrospective.

When applying for leave to proceed, Counsel for the petitioners said that they did not dispute the first punishment imposed in respect of offence of ragging, and that their case was confined to the second punishment and the retrospective application of the amendment.

At the hearing learned State Counsel, quite properly submitted that he did not object to the grant of a declaration that the petitioners' fundamental rights under Article 12 (1) had been infringed by reason

of the imposition of the second punishment, and the antecedent procedure; he strenuously submitted, however, that in the exercise of our equitable discretion under Article 126 (4) we should not grant any other relief to the petitioners.

Mr. Bandara on behalf of the petitioners urged that they had been punished once, and that the second punishment, imposed contrary to law, should not be permitted to stand, or should at least be reduced because, he said, expulsion was a punishment wholly disproportionate to their offence: they were just out of school, and starting life, and had not realised the seriousness of what they were doing.

We agree that the petitioners' fundamental rights under Article 12 (1) have been infringed and grant them a declaration to that effect. However, not only do they admit the offence of ragging, but it is quite clear that what they say they did on 9.10.95 constituted severe ragging. On the basis of their own statements and admissions, it is wholly inequitable to grant them any relief.

The petitioners' misconduct is extremely serious. It is not just a matter between one individual and another. All the seniors were involved, and the petitioners did not claim that they were only passive observers. Ragging is sometimes sought to be justified as being a necessary part of orientation to life in Universities and other Institutions of higher learning. Such ragging may be tolerated, if at all, if it is clean fun; but it is totally unacceptable if it causes pain or suffering, or physical, mental or emotional distress, to the victims. No normal person could possibly have considered what happened in this case to be fun: on the contrary, it was cruel, inhuman and degrading to ill-treat or torment persons to the point of pain and exhaustion requiring hospitalization, not to mention the possible long-term adverse mental effects, even on the victims who did not need hospitalization. Should not this Court refrain from granting relief to petitioners who are plainly guilty of cruel, inhuman and degrading treatment of their junior colleagues?

I must also note that this was not an instance of ragging by a handful of seniors. All the seniors got together to bully the newcomers; the ragging took place in the College premises openly, and for some time, and the fact that persons in authority did not intervene indicates that what took place was a form of terrorism.

In exercising our discretion, we cannot ignore the purpose of the College: to train teachers to be entrusted with the care and education of the young. Learned State Counsel submitted, with much justification, that persons guilty of such misconduct are not fit to be entrusted with the powers and responsibilities of teachers.

Yet another relevant matter is that ragging is easily done, but difficult to prove; victims are afraid to complain, because reprisals are likely; those in authority often fear to get involved, whether by intervening, reporting, or otherwise. The disciplinary authorities are sometimes intimidated into mitigating or even cancelling punishments. In these circumstances, the public interest demands deterrent, rather than lenient, punishment for admitted or proven misconduct, and in my view the punishments first imposed were wholly inadequate for what the petitioners did. To restore those punishments would be to condone the violation of the rights of the newcomers.

Finally, Mr. Bandara urged in mitigation that the petitioners were young. But their victims were even younger, and needed help in adjusting to the complexities of life in a new environment; they were entitled to treatment that would bring smiles to their anxious faces, and not tears to their eyes or distress to their minds.

I therefore consider that, apart from a bare declaration, no relief should be granted to the petitioners.

AMERASINGHE, J. – I agree.

GUNASEKERA, J. – I agree.

Declaration granted.