JAYASINGHE
v
THE NATIONAL INSTITUTE OF FISHERIES AND NAUTICAL ENGINEERING (NIFNE) AND OTHERS

SUPREME COURT
S.N.SILVA, CJ.
BANDARANAYAKE, J . AND
DE SILVA, J.
S.C.(FR) 639/2001
6 JUNE, 27 JULY AND
6 AUGUST, 2003

Fundamental Rights – Manner of pleading the case for the petitioner – Rule 44 (a) of the Supreme Court Rules – Rule against prolixity – Use of defamatory language in pleadings.

The petitioner who was Director of the 1st respondent Institute from 20.12.1999 was interdicted by letter dated 8.11.2001. He had claimed the right to appointment as the Director General of the Institute and filed FR Application No. 692/2000 and a writ application in the Court of Appeal, CA 1569/2000 both

of which were dismissed for willful suppression of material facts. Two other writ applications are pending judgment.

The petitioner also filed the present petition. Despite its length and prolixity, he failed to aver how his interdiction had violated his rights under Article 12(1) of the Constitution. The language used in his petition is slanderous and abusive of the character of the respondents.

Held

1. A preliminary objection that the petitioner had failed to satisfy Rule 14(1)(a) of the Supreme Court Rules must be upheld. That Rule requires the petitioner to set out a plain and concise statement of facts and the infringement of the fundamental right. These guidelines are similar to those set out in sections 40(d) and 46(2) (a) and (b) of the Civil Procedure Code in respect of pleadings.
2. The use of slanderous and abusive words in respect of the respondents would also negate compliance with the above guidelines in a Public Law remedy. The right to seek relief for infringement of fundamental rights should not be made a means of defaming persons who would otherwise be entitled to vindicate their rights in respect of such allegation, if they are published.

APPLICATION for relief for infringement of fundamental rights (preliminary objection.)

Kuwera de Zoysa with *Senaka de Saram* for petitioner

D.S.Wijesinghe, P.C.with *C.Samaranayake* for 1st, 5th, 8th, and 9th respondents.

Cur.adv.vult.

March 29, 2004

SARATH N. SILVA, C.J.

The Petitioner joined the public service as a lecturer in Fishing 01
Gear and Methods attached to the Training Division of the Ministry of Fisheries with effect from 1.3.1982. He continued in service of that Ministry, inclusive of a stint as a volunteer in the Sri Lanka Navy, upto 1990. He was granted 5 years no-pay leave for employment abroad covering the period January 1990 to January 1995 and resumed duties in the Ministry on 1.9.1994. He was appointed by the Public Service Commission as Director of the National

Institute of Fisheries Training (NIFT), being a Department within the Ministry of Fisheries with effect from 1.6.1995.

The work of the NIFT was taken over by another Institute established under Act, No.36 of 1999. The new Institute came into operation with effect from 20.12.1999 and is known as the National Institute of Fisheries and Nautical Engineering (NIFNE), being the 1st respondent. The petitioner was appointed as a Director of NIFNE with effect from 20.12.1999 (1R9).

The petitioner claims that he should have been appointed as Director-General of NIFNE. In terms section 14(1) of the Act, the Director-General is the principal executive officer and the principal academic officer of the Institute and is appointed by the Minister on the recommendation of the Council.

The petitioner has filed one application in this Court alleging that his fundamental right guaranteed under Article 12(1) of the Constitution has been infringed by the failure to appoint him as Director-General. He has also filed 3 applications in the Court of Appeal seeking Public Law Remedies such as *writs of certiorari*, prohibition and *mandamus* in respect of the same appointment. Many averments in the lengthy pleadings filed by the petitioner in these applications relate to the claim of the petitioner to be the Director-General and to a transaction in which the property of the Government used by the NIFT including certain buildings have been leased to a private sector establishment (6th respondent). The petitioner alleges that this lease of property has caused economic loss to the Government and has been entered into with the fraudulent intent. At some point of time it appears that the Government decided to terminate the lease in favour of the 6th respondent, resulting in the 6th respondent filing an application in this Court alleging an infringement of its rights guaranteed by Article 12(1), (S.C. Application No. 896/99).

After leave to proceed was granted in that application, the parties to that application agreed upon terms of settlement, which included the termination of the lease and certain payments being made to the 6th respondent. The petitioner sought to intervene in that application objecting to the settlement which the NIFNE was seeking to enter into with 6th respondent. That settlement has

thereafter taken effect and the petitioner's application for intervention was refused by this Court.

The long and meandering averments in 113 paragraph of the petition that run into 24 pages contain an account of the petitioner's life, education and career starting from the time he went to school through to his higher education, the employment in the Ministry, employment on overseas leave, work in the NIFT and the NIFNE upto the stage at which he was interdicted by letter dated 8.11.2001(P84).

The 1st respondent has raised a specific objection on the ground that the petitioner is not entitled to relief since the petition has not been prepared in compliance with Rule 44(1) (a) of the Supreme Court Rules of 1990.

This rule requires a person seeking relief in respect of an infringement or an imminent infringement of a fundamental right by executive or administrative action to:

> "set out in his petition a plain and concise statement of the facts and circumstances relating to such right and the infringement or imminent infringement thereof, including particulars of the executive or administrative action whereby such right has been, or is about to be, infringed, where more than one right has been, or is about to be infringed, the facts and circumstances relating to each such right and the infringement or imminent infringement thereof shall be clearly and distinctly set out. He shall, also refer to the specific provisions or the Constitution under which any such right is claimed."

The rule is in turn based on the provisions of section 40(d) of the Civil Procedure Code as to the contents of a plaint in a civil action. This provision reads as follows:

> 40. "The plaint ..... shall contain the following particulars:
>
> (d) a plain and concise statement of the circumstances constituting each cause of action, and where and when it arose. Such statement shall be set forth in duly numbered paragraphs; and where two or more causes of action are set out, the statement of the circumstances constituting each cause of action must be separate, and numbered,"

It is clear from these provisions that it is a salutary rule of pleadings, be it a plaint in a civil action, a petition in an application for an infringement or imminent infringement of a fundamental right or an application for any other Public Law remedy that the plaint or petition should focus on what may be generically termed as the cause of action. In a civil action, the cause of action would be the wrong on the part of the defendant which affects the plaintiff and in respect of which relief or a remedy is sought by invoking the jurisdiction of the Court (vide section 5 and 6 of the Civil Procedure Code). Similarly in an application in respect of an infringement or imminent infringement of a fundamental right, the focus should be on the executive or administrative action whereby the applicant's fundamental right which is claimed is infringed or about to be infringed and the invocation of the jurisdiction of this Court for just and equitable relief. The pleading filed in Court should focus on these elements and set out a plaint and concise statement of the relevant facts and circumstances. The provisions of section 46(2) (a) and (b) of the Civil Procedure Code lay down the guidelines that would apply with equal force to a plaint in a civil court or a petition filed in this Court as to the manner in which the relevant facts and circumstances should be set out in the pleading. They are:

1. That the facts and circumstances should be stated without prolixity i.e. without being lengthy or long-winded;
2. That the facts and circumstances should be correct;
3. That it should not contain particulars other than those required to set out the cause of action (the infringement or imminent infringement by executive or administrative action of the fundamental right that is claimed).

As noted above the petition contains an extensive account of virtually the petitioner's life story commencing from the time he received education in school. These particulars by far antidate the enactment of the National Institute of Fisheries & Nautical Act, No.36 of 1999. As far as the application is concerned the gravamen of the petitioner's complaint is his interdiction contained in document P84. Ironically the petition does not even contain an averment as to the manner in which the order in P84 infringed the fundamental right guaranteed to the petitioner by Article 12(1) of the

Constitution. There are two paragraphs in the petition concerning the interdiction, namely paragraphs 107 and 111 contained at pages 23 and 24 of the petition. I would reproduce paragraph 11 to demonstrate the lack of relevancy on the one part and the verbosity and prolixity on the other of the contents in the petition.

> "The petitioner states that his efforts to counter his interdiction by the 2nd respondent for his application to intervene in S.C. Application No. 896/99(FR) and other hypothetical offences he has never been charged with, is a direct result of his failure or refusal of the respondents to implement the Cabinet decision to abrogate the lease agreement, recover possession of the premises and property (by issue of a "quit notice" as recommended by the Attorney-General) and use them for the realization of the proposal to establish NIFNE as a Fisheries University, and on the contrary to act in a manner to permit the continued exploitation by CINEC of an illegal and void contract to their tremendous benefit and the severe detriment of the Sate in general and Fisheries Training in Sri Lanka in particular (by permitting CINEC to release only the hostel but continue to occupy and possess all the rest of the extensive premises and properly for about five years after the Cabinet decision to abrogate the treaty and recover possession of the minimum rental due) the cover-up of the attempt to defraud the State in respect of the proposed installation of a flicked ice plant in a training vessel, without recovery is arbitrary, *mala fide*, in violation of the Rules of natural justice, done for a collateral purpose, patently illegal, null and void and of no force or avail in law, and violative of the petitioner's fundamental rights to equality before the law and equal protection of the law guaranteed by Article 12(1) and the freedom of speech and expression guaranteed by Article 14(1) (a) of the Constitution."

The vital paragraph which purports to set out the alleged infringement of the petitioner's fundamental rights is an incomprehensible rigmarole.

In the circumstances I am inclined to agree with the objection raised by the respondents, that the petition has not been prepared in the manner required by Rule 44(1) (a) of the Supreme Court Rules.

As regards the ground based on multiplicity of actions, it is noted that the petitioner has filed S.C.(FR) 692/2000 in December 2000 challenging the steps that were being taken to appoint the 18th respondent to the post as Director-General of the 1st respondent institute and relief sought was a direction on the respondent to appoint the petitioner to the post of Director-General. The application was dismissed by this Court on 20.3.2002, *inter alia* on the ground that the petitioner had willfully suppressed material facts from Court. The petitioner was also directed to pay costs of the application to the respondent.

The petitioner filed a writ application in the Court of Appeal No. 1569/2000 seeking similar relief from the Court of Appeal. This application was dismissed by the Court of Appeal with costs, on the basis *inter alia,* that there has been willful suppression of the material facts by the petitioner. There are 2 further applications in the Court of Appeal in which it appears that judgments have not yet been delivered. It is thus clear that the petitioner has filed a multiplicity of proceedings against the 1st respondent and against some of the persons who are named as respondents in this application.

There is certainly no objection to any person who is aggrieved by a course of executive or administrative action that affects his rights seeking Public Law remedies either in the Court of Appeal or in this Court. However, this process cannot be used to inflict undue hardship to the Public institutions and the persons who are made respondents. It is noted that the petitioner has included scathing remarks alleging fraud and impropriety on the part of the several named persons. Relevant facts and circumstances may be appropriately set out in a pleading on the basis of the guidelines mentioned above, but, a person seeking a Public Law remedy should not use words of slanderous and abusive nature affecting the character and social standing of persons who are named as respondents. It should be firmly borne in mind that these proceedings have a sanctity of their own in that they are designed to uphold the fundamental rights of persons and should not be made a means of defaming persons who would otherwise be entitled to vindicate their rights in respect of such allegations, if they are published.

It is manifest in perusing the averments of the petition in this case that the petitioner has endeavoured to portray himself as a

paragon of virtue who will work for the public good, whilst on the other hand the persons against whom allegations are made are depicted as villains bent on defrauding public property. In extolling in his virtues and condemning others the petitioner has stated in paragraph 19 of the petition as follows:

> "having been shocked and saddened by the prostitution of this vital training facility to serve the narrow selfish interest of the 8th respondent and other high ranking individuals in the Ministry, but being well aware of the dire need of the fisher folk and the fishing industry of this country he (the petitioner) decided to sacrifice his professionally rewarding and lucrative employment (his monthly salary was US$ 3000) by voluntarily cancelling the balance period no pay leave granted to him and resuming duties as Fleet Manager on 1.9.1994."

The petitioner has in this averment endeavoured to make out that in view of the conduct of the 8th respondent and other officers of the Ministry who misuse public property for their personal gain, he made a sacrifice, cut short his foreign employment and returned to work in the Ministry. In paragraph 17 of the petition he has stated that he took this decision in view of the election of the new government which took place in 1994 and to assist the new Minister to reorganize Fisheries Training Institute and Training Centre that was then in total disarray and virtually non-functional.

The respondents have contradicted this averment of the petitioner and has in fact produced marked R3 a plaint filed by the petitioner in D.C.Colombo case No.14862/MR on 24.3.1994, against his former employer, whilst on no pay leave granted by the Ministry. He has stated in that plaint that the vessel he was engaged to serve on was not in a fit state and the repairs that were being done were grossly inadequate and he urged that further repairs be done and pointed out that it would be dangerous to sail the vessel without such repairs being done. He has further stated that he protested strongly to the representative of his employer who came to examine the vessel.

In paragraph 12 of the plaint he has stated that thereupon the representative instructed the owner to send a relief Master who came on board the vessel and the petitioner was compelled to sign

the necessary documents and leave the vessel. It is further stated that the employer thereafter arranged the transport of the petitioner back to Sri Lanka at their expense. He has claimed in that action a sum of US$ 8100 as the equivalent of three months' wages in view of the summary termination of his services.

Thus it is clear that the averments in the petition to this Court that he sacrificed a lucrative job to serve his country is palpably false.

For the reasons stated above I uphold the objections that have been raised by the respondents and dismiss this application. No costs. 240

In fairness to counsel whose appearance is noted above, I have to place on record the fact that he came into the case only at the stage of argument. The petitioner has been represented in this case and in the several other proceedings referred to by an attorney-at-law who was his registered attorney and counsel.

BANDARANAYAKE, J. - I agree

SILVA, J. - I agree

Preliminary objection upheld;
application dismissed.