

1966

*Present : Alles, J., and Siva Supramaniam, J.*

H. M. J. HERATH, Appellant, and V. PANDITHA, Respondent

*S. C. 380/1963—D. C. Colombo, 45772/M**Civil Procedure Code—Section 461—“ Public officer ”.*

Notice of action in terms of section 461 of the Civil Procedure Code need not be given to a public officer in a case where he has acted not in his official capacity but as Secretary of a body which, though it receives funds from the Government and is pledged to carry out the policies of the Government, is independent and non-governmental.

**A**PPEAL from a judgment of the District Court, Colombo.

*C. Ranganathan, Q.C.*, with *Siva Rajaratnam. K. Sivananthan* and *C. Chakradaran*, for the plaintiff-appellant.

*H. W. Jayewardene, Q.C.*, with *B. J. Fernando* and *S. S. Basnayake*, for the defendant-respondent.

*Cur. adv. vult.*

November 8, 1966. ALLES, J.—

The plaintiff instituted this action against the defendant on two causes of action claiming damages in a sum of Rs. 10,000 with legal interest and costs. On the first cause of action he alleged that the defendant wrongfully, maliciously and without just cause discontinued the services of the plaintiff from the post of Assistant Editor of the Sinhalese Encyclopaedia; on the second cause of action he claimed damages for alleged defamatory statements made and published by the defendant to the members of the Finance Committee of the Lanka Bauddha Mandalaya. In his answer the defendant pleaded that at all material times he was a public officer and entitled to notice of action under section 461 of the Civil Procedure Code and that in the absence of such notice the plaintiff could not maintain his action. This matter was raised as a preliminary issue at the trial, and after hearing evidence and the submissions of

Counsel, the learned District Judge made order answering the preliminary issue in favour of the defendant and dismissed the plaintiff's action with costs. The present appeal is from this order.

By a Cabinet Conclusion of 16th September, 1954, the Government decided to inaugurate celebrations in connection with Buddha Jayanti to commemorate the 2500th anniversary of the passing away of the Lord Buddha. Elaborate arrangements were made by the Government to conduct these celebrations on a large scale and create a spiritual awakening of the Buddhist religion in the country. Proposals were made for the establishment of a Chair of Buddhism at the Ceylon University; the appointment of a Lanka Bauddha Mandalaya to make representations to the Government and undertake all matters connected with Buddha Jayanthi; the publication of recognised Buddhist texts; the publication of an authoritative Buddhist Encyclopaedia for international use and a host of other matters connected with the fostering and advancement of the Buddhist religion. The appointment of a Lanka Bauddha Mandalaya formed an important part of the Government plans. It was a non-governmental body consisting of the Sangha Sabha (Council of Bhikkus) and the Gihi Sabha (Council of the laity). The Mandalaya had its own written constitution. There was provision for the appointment of various sub-Committees to deal with particular subjects; a Central Executive Committee, consisting of the Chairman and Secretaries of the sub-Committees, the two Secretaries of the Sangha Sabha and Gihi Sabha and eight other members appointed by the Prime Minister to supervise the work of the sub-Committees; a Finance Committee to control the expenditure of funds allocated to the sub-Committees by the Central Executive Committee and the appointment of office-bearers including a General Secretary. The Government had voted large sums of money, amounting to nearly 14 lakhs, for the expenses connected with the celebrations, and naturally desired to keep some kind of check on the activities of the Mandalaya. In 1955, Buddha Jayanti was one of the subjects allocated to the Minister in charge of Local Government and Cultural Affairs (P1) and under section 22 of the Constitution of the Mandalaya the General Secretary had to be an officer of the Ministry of Home Affairs appointed with the approval of the Prime Minister. He was to be in overall charge of the administration of the Mandalaya activities, the Secretary of the Central Executive Committee, a member of all sub-Committees, responsible for the accounting work of the Mandalaya and in charge of the receipt of all funds and the making of payments out of the sums voted by the Government.

The first General Secretary of the Mandalaya was Dr. A. W. P. Guruge of the Ceylon Civil Service and he was succeeded by the defendant, who was also a Civil Servant, then attached to the Department of Cultural Affairs. As a Civil Servant he was a public officer subject to Governmental regulations, he was appointed the General Secretary by the Government with the approval of the Prime Minister and his salary was paid from Government funds. The defendant functioned as

Secretary of the Mandalaya until it was wound up in September, 1957. When he commenced his functions as General Secretary he was for some time working in the Ministry of Home Affairs and later transferred to the Department of Cultural Affairs, the head of which was N. Q. Dias. When the Mandalaya was wound up he was appointed Assistant Director of Cultural Affairs. He was paid an honorarium of Rs. 2000 from the Mandalaya funds when he ceased to function as General Secretary.

The plaintiff was appointed to the post of Assistant Editor, Sinhalese Encyclopaedia, with effect from 1st May, 1955 (*vide* Letter of Appointment D 13). The letter was signed by the defendant as General Secretary of the Lanka Bauddha Mandalaya. According to his terms of appointment, the plaintiff was required, after a period of six months probation, to enter into a contract with the defendant as Secretary for a period of 4 years; if the plaintiff's work or conduct was found unsatisfactory, the General Secretary was empowered, in consultation with the Editor, to terminate the plaintiff's services without further notice. Copies of the plaintiff's letter of appointment were sent to the Finance Committee and the Sinhalese Encyclopaedia Committee. According to D 14, which is a minute addressed to the defendant as Secretary, the Editor-in-Chief had brought to the notice of N. Q. Dias that the plaintiff's work was unsatisfactory and Dias discussed the matter with the Permanent Secretary and having decided to take action to discontinue the plaintiff's services, Dias directed the defendant to send the plaintiff a letter of discontinuance on the ground that the plaintiff's work and conduct was unsatisfactory. In pursuance of this directive, the defendant sent the letter D 15 to the plaintiff on 14th December, 1956 discontinuing his services with immediate effect, signing the letter as Secretary of the Mandalaya. It would appear from D 16, the minutes of the meeting of the Finance Committee on July 1957, that the Finance Committee had approved of the termination of the plaintiff's services because there is a record in the minutes that "the plaintiff was not entitled to any payment in lieu of notice because of the reasons which led to his discontinuance".

It has been urged by Counsel for the plaintiff-appellant that in terminating the services of the plaintiff, the defendant was not acting as a public officer and was only functioning as Secretary, required to carry out the decisions of the Mandalaya. There is no evidence that the plaintiff was dismissed by virtue of any resolution of the Mandalaya and it would appear from D 14, D 15 and D 16 that the decision to terminate the plaintiff's services was one that was decided upon by the

Editor and the Director of Cultural Affairs, and subsequently ratified by the Finance Committee. The letter D 15 was apparently sent by the defendant on the directions of Dias and it was argued that in doing so the defendant was purporting to act in his official capacity in complying with the directions of his superior officer. The question however that arises for decision is whether Dias had any authority to give any directions to the defendant and whether the defendant, when he sent the letter D 15, was purporting to act in his official capacity as a public servant. The plaintiff was an employee of the Mandalaya, paid from the Mandalaya funds and his letter of appointment was signed by the defendant as Secretary of the Mandalaya. The Constitution of the Mandalaya (D 2) would seem to indicate that the Mandalaya was an independent body, pledged no doubt to carry out the policies of the Government but having full control to manage its own affairs and employ its own officers. Under Rule 26 of the Constitution "all orders given to the General Secretary should be in the form of a resolution passed at sub-Committee meetings." Presumably therefore all appointments to offices in the Mandalaya and any discontinuance of its employees must be sanctioned by resolutions of the Mandalaya and its decisions carried out by its General Secretary. In doing so it could not be maintained that he was functioning as a public officer; he would only be carrying out the directions of the Mandalaya in his capacity as Secretary. I do not think the fact that he was admittedly a public officer, paid out of Government funds and subject to Government control, makes any difference. In carrying out his duties as Secretary, he was not responsible to the Government. In sending the letter D 15 to the plaintiff he was not purporting to act as a public officer in his official capacity and it is not open to him to take shelter under section 461 of the Civil Procedure Code and plead that he is entitled to notice under that section.

The learned District Judge in dismissing the plaintiff's action has referred to several authorities which have also been cited before us. I do not think however that these citations are very helpful since the question, whether the defendant in this case was acting as a public officer in his official capacity or not, must be decided after a consideration of the facts in the instant case. I am therefore of the view that no notice under section 461 was necessary. The plaintiff's appeal is allowed with costs and the case remitted to the District Court for adjudication on the remaining issues.

SIVA SUPRAMANIAM, J.—I agree.

*Appeal allowed.*