

SAHEER AND OTHERS
v.
BOARD OF GOVERNORS,
ZAHIRA COLLEGE AND OTHERS

COURT OF APPEAL
JAYASINGHE, J. (P/CA) AND
EDIRISURIYA, J.
CA NO. 1002/97
JANUARY 29, 2002 AND
MARCH 08, 2002

Writ of certiorari – Education Ordinance, sections 37 and 62 – Board of Trustees of Maradana Mosque Ordinance, No. 22 of 1924 – Zahira College Board of Governors Incorporation Act, No. 18 of 1982, section 6A – Assisted Schools and Training Colleges (Special Provisions) Act, No. 5 of 1960 – Incorporation of Zahira International School (Pvt) Ltd. – Can a private company run an international school in Zahira College premises? – Is the Board of Governors a statutory public authority? – Is Zahira College a public body?

A writ of *certiorari* was sought preventing the 2nd respondent (Principal) from carrying on Zahira International School (Pvt) Ltd., at the premises where Zahira College is situated. The petitioner contends that, the 1st respondent has exceeded its authority granted by giving approval to a private company to run an International School in the Zahira College premises.

The respondent contended that the petitioners are parents of children studying at Zahira College, and as such they have a contractual relationship with Zahira College and writ will not lie.

Held:

- (1) Within the scheme of national education, the Board of Governors is a statutory public authority receiving and spending State funds being subject to government regulations in the administration of students, employment of teachers, etc.

- (2) Zahira College is a public body.
- (3) The 1st respondent has exceeded the authority granted under section 6A of Act, No. 18 of 1982, by giving approval to a private company to run an International School in the Zahira College premises. The 1st respondent has no right to use buildings of Zahira College for any other purpose other than for and on behalf of Zahira College.

Cases referred to :

1. *Nanayakkara v. The Institute of Chartered Accountants of Sri Lanka* – (1981) 2 SRI LR 52.
2. *Trade Exchange (Ceylon) v. Asian Hotels Corporation Ltd.* – (1981) 1 Sri LR 67.
3. *Rex v. National Joint Council for Dental Technicians, Ex parte Neate* – (1953) 1 QB 704.
4. *Wijesiri v. Siriwardena* – (1982) 1 SRI LR 171.

APPLICATION for writs in the nature of *certiorari* and/or prohibition.

R. K. W. Goonasekera with *S. Jayathilake* for petitioner.

Farook Thaheer for 1st and 2nd respondents.

Cur. adv. vult.

December 03, 2002

JAYASINGHE, J. P/CA

The petitioners filed an application for the issuance of a writ of *certiorari* to quash the order/decision of the 1st respondent granting the 2nd respondent permission to run an International School in the Zahira College premises, Colombo, a writ of prohibition preventing the 2nd respondent from carrying on Zahira International School Pvt. Ltd. at the premises where Zahira College is situated, a writ of prohibition preventing the 1st and 2nd respondents from allowing the

use of Zahira College buildings or any other facilities, a writ of prohibition preventing the 1st respondent from allocating or using any funds collected on behalf of Zahira College International. 10

The petitioners state that Zahira College, Colombo, was established in the year 1912 and managed by the Maradana Mosque. By Ordinance, No. 22 of 1924 the Board of Trustees of the Maradana Mosque was incorporated and the management and direction of Zahira College was vested in the said incorporated body. After Zahira College, Colombo, Board of Governors Incorporation Act, No. 18 of 1982, was enacted the management of Zahira College vested in the said Board of Governors of Zahira College.

It was submitted that prior to 1960 Zahira College was an assisted school and after Assisted Schools and Training Colleges (Special Provisions) Act, No. 5 of 1960 Zahira College became an unaided school within the meaning of section 62 of the Education Ordinance and functioned as such until the Minister of Education took over Zahira College and consequently ceased to be an unaided school and became an assisted school. This decision was challenged in the Supreme Court and thereafter in the Privy Council and Zahira College reverted back to its original status of an unaided school. 20

In August, 1995, the Board of Governors of Zahira College appointed the 2nd respondent as the Principal of Zahira College. The petitioners state to the best of their knowledge the 2nd respondent does not have a degree from a recognised University and neither does he have 10 years' teaching experience. The petitioners state that appointment of the 2nd respondent as principal of Zahira College is contrary to the regulations made under the Education Ordinance in respect of appointments of Principals to government assisted schools. 30

By letter dated 17. 09. 1996, the 2nd respondent summoned the advanced level commerce students along with their parents and informed them that Zahira College intended to commence classes in the English medium and the students who wished to make use of this opportunity could do so. There were advertisements also placed in the press 40 calling for applications for Graduate Teachers to teach Commerce subjects in the English medium at Zahira College. On 19. 10. 1996 the 2nd respondent summoned the parents for a meeting and were given forms to be signed granting their consent to the Principal of Global Open Campus (Pvt.) Ltd to conduct classes for advanced level commerce students at Zahira College premises in the English medium.

The petitioners state that accordingly 83 students were admitted to Global Open Campus (Pvt.) Ltd. advanced level English medium commerce class commenced on 04. 11. 1996 and the students were required to pay Rs. 1,000 per month as school fees. The names of 50 those students were removed from the register of Zahira College. However, the classes were held at Zahira College. The petitioner objected to the 2nd respondent using the Zahira College building for this purpose.

The uniform material issued to the students of Zahira College for the year 1997 were also given to students Global Open Campus (Pvt.) Ltd. Some of the students at the said school were made prefects of Zahira College. On 17. 12. 1996 Zahira International School (Pvt.) Ltd. was incorporated. The petitioners state that their inquiries revealed, that the said international school is to be housed in the Zahira College 60 premises and that the commerce students who had enrolled under Global Open Campus (Pvt.) Ltd. had commenced their studies under the Zahira College International School (Pvt.) Ltd. The petitioners state that the admission fee for a student is Rs. 15,000 with school fees

being Rs. 1,000 per month. The petitioners state that the student population of Zahira College is drawn, namely from the middle class and lower middle class of the society. The petitioners state that for the last 15 years the Board of Governors of Zahira College had managed controlled and conducted the affairs of Zahira College as an educational institution in accordance with the General Educational Policy of the Government. That according to section 6A of Act, No. 18 of 1982 the 1st respondent has exceeded the authority granted under the said section by giving approval to a private company to run an international school in Zahira College premises. That buildings of Zahira College has been put up with funds collected from the Muslim community for and on behalf of Zahira College and the 1st respondent has no right under Act, No. 18 of 1982 to use buildings of Zahira College for any other purpose other than for and behalf of Zahira College.

The respondents in their objections took up the position that there are no students of any international school referred to by the petitioners and that all students are students of Zahira College; that Zahira International (Pvt.) School Ltd. is a fully owned subsidiary of Zahira College, that all monies collected or belonging to Zahira International School and all monies received from students are credited to a common fund. That Zahira College decided to have English medium classes and the government has in no way raised any objection. The respondents state that there are no students of Zahira College International (Pvt.) Ltd. The respondents state that the 2nd respondent is a person with the necessary qualifications and experience to be the Principal of Zahira College.

It was the contention of Mr. Thaheer that the petitioners are parents of children studying at Zahira College and as such they have a contractual relationship with Zahira College and writ therefore will not

lie. In *Nanayakkara v. The Institute of Chartered Accountants of Sri Lanka*⁽¹⁾ the petitioner who was a Stores Clerk of the institute was charged for the violation of the regulation of the Institute and disciplinary inquiry was initiated against him. The petitioner filed an application for writ of *certiorari* and prohibition to quash the disciplinary proceedings. It was held that –

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“Examination of the regulations in the manual of procedure showed that the petitioner’s employment had a statutory flavour which differentiated it from the ordinary relationship of Master and Servant: The manual of procedure gave rights to the employee and imposed obligations on the employer going beyond the ordinary contract of service and regulating, *inter alia*, the grounds and procedure after dismissal. The remedy by way of *certiorari* was therefore available to an employee.”

Admittedly, Zahira College Board of Governor is a statutory body. In *Trade Exchange (Ceylon) v. Asian Hotels Corporation Limited*⁽²⁾ it was observed that –

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“An important aspect of prerogative remedy is that they belong exclusively to public law, their primary object being to make the machinery of government work properly rather than enforce private rights. An application for prerogative remedy of writ of *certiorari* is a proceeding calling some public authority to show legal justification for its action and to account for exceeding or abusing its power. A public authority may be described as a person or administrative body entrusted with function to perform for the benefit of the public and not for private profit.”

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Lord Goddard, C.J. in *Rex v. National Joint Councils for Dental Technicians, Ex parte Neate*⁽³⁾ observed that :

“The bodies to which in modern times the remedies of this prerogative writs have been applied have all been statutory bodies on whom Parliament has conferred statutory powers and duties which when exercised may lead to the detriment of subjects who may have to submit to their jurisdiction.”

Mr. Gunasekara invited attention of court to the regulations made by the Minister of Education under section 37 of the Education Ordinance. The said regulations required all assisted schools and 130
unaided schools to conform to requirements stated therein in regard to the qualifications, appointments, etc., of teachers and provided that teachers who do not conform to the conditions stipulated in the said regulations and who are already in service to obtain the approval of the Minister to continue in service. The regulations made it obligatory for the management of such schools to make the requisite applications to the Minister. The argument that the petitioners as parents of students at Zahira College enjoyed nothing more than the contractual relationship is therefore without 140
merit. The powers of the Board of Governors as spelt out in the Act cannot be abused or exceeded. When it does writ would lie. Within the scheme of National Education the Board of Governors is a statutory public authority receiving and spending State funds, being subject to government regulations in the admission of students, employment of teachers, etc. As Wade says *certiorari* and prohibition are designed to prevent excess or abuse of power by public authorities. That Zahira College is a public body therefore cannot be contraverted.

Counsel for the respondents also submitted that the order / decision sought to be quashed is not before court and as such the application for writ cannot be maintained. 150

Mr. Gunasekera invited attention of court to P11A which is a notice under the hand of the Principal referring to a decision of the Board of Governors to admit students to Zahira International School. Counsel then referred to P5 a specimen addressed to the Principal, Global Open Campus (Pvt.) Ltd. by which the parents will consent to the students names being removed from the register of students of Zahira College and among other things to apply for the Advanced Level Examination as a private candidate.

Mr. Gunasekara submitted that in *Wijesiri v. Siriwardena*⁽⁴⁾ it was held that it is sufficient if the applicant can show a genuine interest¹⁶⁰ and ask for discretionary relief to have P5 and P11A set aside.

I accordingly grant:

- (1) A writ of *certiorari* quashing the order/decision of the 1st respondent granting the 2nd respondent permission to run an International School at Zahira College premises in Colombo.
- (2) A mandate in the nature of writ of prohibition preventing the 2nd respondent from carrying on Zahira College International School (Pvt) Ltd. at the premises where the Zahira College is situated. 170
- (3) A mandate in the nature of a writ of prohibition preventing the 1st respondent from allocating or using any funds on behalf of Zahira College and any funds in the Zahira account for any purposes of the Zahira College International School (Pvt.) Ltd.

- (4) A writ of prohibition preventing the 1st respondent from allowing to use of Zahira College building or any other facility such as laboratories, libraries, playground, *etcetera*, for students of Zahira College International School (Pvt.) Ltd. ¹⁸⁰

The 1st respondent shall pay the three petitioners a sum of Rs.10,000 each as costs.

EDIRISURIYA, J. – I agree.

Application allowed.