# NATURAL JUSTICE IN SCHOOLS

## *Mahadevan* v. *Anandarajan*[1]

This decision of the Judicial Committee of the Privy Council brings to a close yet another of the numerous cases on the application of the principles of natural justice to quasi-judicial hearings. What would be of special interest to many is the fact that this particular decision concerns the discretionary power of the headmaster of a school to suspend or expel a pupil by virtue of Regulation 8 of the Education (School Discipline) Regulation, 1959, of Malaysia which provides:

> "Whenever it appears to the satisfaction of the head teacher of any school –
>
> (a) to be necessary or desirable for the purpose of maintaining discipline or order in any school that any pupil should be suspended or expelled. . . he may by order expel him from such school."

There was no controversy over the proposition that a head teacher is thereby invested with a quasi-judicial function. What was in contention was the implementation of Regulation 8 which prescribes no special form of procedure for exercising the function.

The appellant, then a minor, was expelled from his school, the King George V School, Seremban, for alleged misbehaviour at a talentime show held in the school on 1st April, 1968. The respondent, headmaster of the school, interviewed the appellant the following day and after consulting members of the teaching staff, made up his mind about the expulsion on 10th April. However he did not convey this decision to the appellant until 4th May, 1968, his reason being that the school was about to close for the first term holidays and he, the respondent, had to leave for Johore Bahru on official business.

These findings of fact were accepted by the trial judge in the judgement of the High Court ([1970] 1 M.L.J. 50). He held that the language used in Regulation 8 supported the view that the order of a head teacher is quasi-judicial and not merely administrative, thus the making of the order required the observance of the rules of natural justice. These rules, as enumerated by Lord Hodson in *Ridge* v. *Baldwin* ([1964] A.C. 40, 132), are: ". . . (1) the right to be heard by an unbiased tribunal. (2) the right to have notice of charges of misconduct; (3) the right to be heard in answer to these charges." As to the first requirement, both the trial judge and the

[1] [1974] 1 M.L.J. 1.

majority of the Federal Court ([1971] 2 M.L.J. 8) found that the respondent had not been actuated by any unlawful motive in expelling the appellant. However, Gill F.J., and Suffian, Ag. L.P. (as he then was), did not agree with the trial judge's further finding that the requirements of natural justice had not been fully complied with because the respondent had not, at the time of questioning the appellant, informed him specifically that he would be expelled if he did not provide a satisfactory explanation. Whereas the trial judge had made a declaration that the explusion order was null and void and of no effect on this ground, the Federal Court reversed this decision by holding that Regulation 8 enabled a headmaster to determine a procedure which in his opinion would best comply with the requirements of natural justice; and furthermore that since a quasi-judicial body is not bound to treat an inquiry as a judicial hearing, a headmaster is not required to hold an elaborate inquiry before making an explusion order. A school, on this view, fits within the vast category of cases in which the natural justice rule of *audi alteram partem* can only be applied upon the most general considerations. Accordingly, the Federal Court held, with Ali F.J., dissenting, that the procedure followed by the headmaster satisfied the rules of natural justice.

The appellant's three grounds of appeal to the Judicial Committee were first, as the trial judge and Ali F.J. had concluded, that the rules of natural justice had been contravened by not specifically informing the appellant of the penalty contemplated; secondly that the appellant should have been given an opportunity to consult his parents before answering the headmaster's questions at the interview on 2nd April; and thirdly, that the headmaster had wrongly taken into account another instance of misconduct by the appellant which occurred before he had become headmaster, and which was reported to him for the first time when he was obtaining the views of his fellow teachers. The second argument, which was not specifically referred to by the Federal Court, was summarily dismissed by the Judicial Committee, which held that the 17-year old youth was old enough to proffer his own explanations for his misconduct. Natural justice rules were sufficiently satisfied so long as he had been given an opportunity to put forward his explanation in answer to the charges made. As for the previous report of misconduct, which the respondent had taken note of after the interview and before the explusion order, the Board said that the appellant had been given the opportunity to explain it at the time the misconduct had been discovered. Accordingly, the headmaster was not under a duty to invite another explanation from him. With regard to the main contention, which had caused differences of opinion between the High Court and Federal Court judges, their Lordships on the Judicial Committee found themselves in agreement with the majority opinion of the Federal Court. Natural justice did not require the headmaster specifically to inform the appellant that he intended to expel him if a satisfactory

explanation was not forthcoming. Nothing more than the appellant's knowledge of the risk of explusion was necessary. This, as the trial judge had found, was apparent to the appellant during the interview.

Their Lordships took this opportunity to restate the requirements of natural justice in administrative matters such as the expulsion of a pupil from a school in the following terms: ". . . it would be quite inappropriate to model the procedure on that of a criminal trial. All that natural justice requires is that the person charged with making the decision should act fairly. What is fair depends on the circumstances and is a matter of commonsense." Although this formulation does not add anything new to the principle of *audi alteram partem* as enunciated in recent English and Commonwealth cases, it has added to the category of situations in which the rule is applicable. Such is the language of Regulation 8 that head teachers have been endowed with wide subjective powers of suspension and expulsion. While it can be conceded that the object to be achieved, namely the maintenance of discipline and order in schools, is a necessary and commendable one, yet the powers conferred essentially impinge on the status, if not also the reputation and future livelihood, of pupils affected. In the interest of fairness to pupils, the importation of natural justice rules to regulate the enforcement of powers conferred by Regulation 8 is a necessary restriction. Conversely, it should be accepted that the subjective satisfaction of a head teacher must not be subject to further judicial review for that would only impede his freedom of action to utilise the powers afforded him by the Regulation.

The circumstances of this case indicate that their Lordships have refused to allow any unprecedented extension of the *audi alteram partem* rule which would necessitate the headmaster giving some kind of "caution" to the pupil as to the specific action to be taken. It is reasonable enough that some form of guideline has been laid down whereby a pupil is protected from arbitrary decisions adversely affecting him. From their Lordships' remarks an inference could safely be drawn to negate any suggestion that a pupil of a school has no right whatsoever under the Education Act. The trend of modern decisions has clearly illustrated that students of universities are in principle entitled to natural justice when they are faced with a disciplinary charge, be it explusion for alleged cheating (*University of Ceylon* v. *Fernando* [1960] 1 All E.R. 631), or being sent down for failure in examinations (*R.v. Senate of the University of Aston, ex p. Roffey & Anor.* [1969] 2 All E.R. 964).

The application of this principle to school pupils is undoubtedly a healthy sign that the courts today are more willing to exercise their discretion in applying the rules of natural justice whenever administrators or persons in authority have their decisions or acts impugned for not observing the fundamentals of fair procedure. Though ideas of fairness may vary and the range of factual situations in administrative matters is

obviously great, yet bodies vested with discretionary powers may now undertake more readily to observe minimum standards of procedural fairness.

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## NOTES ON LEGISLATION

### *Akta 123 . . . . . Akta Biro Siasatan Negara, 1973.*
### *Biro Siasatan Negara Act, 1973.*

A naive observer might be forgiven if he comes to the conclusion that Malaysia subconsciously seeks to emphasise its similarities with the U.S.A.. Both countries are federations, were formerly dominated by the British, revere the common law, fly a flag with 13 Stripes and so on. This superficial similarity seems to be further enhanced with the establishment of the Malaysian equivalent of the F.B.I. – the National Bureau of Investigation which replaces the Badan Pencegah Rasuah, or, Anti Corruption Agency.

By section 3(i) of the Biro Siasatan Negara Act, 1973, there is established, for purposes of this Act, the Prevention of Corruption Act[1] and any other legislation (referred to as "prescribed law")[2] to which the Minister may extend the provisions of the Act, a bureau known officially as "Biro Siasatan Negara" (or in English, the National Bureau of Investigation). Provision is made for the appointment of a Director-General of the Bureau by the Yang DiPertuan Agung acting on the advice of the Prime Minister[3] and for the appointment of officers of the necessary classes or grades[4]. It is further provided that the Directive-General shall have all the powers of an officer of the Bureau.[5] This official is also vested with the powers of a Deputy Public Prosecutor under the Criminal Procedure Codes of the Federated Malay States, the Straits Settlements, Sabah and Sarawak.[6] In connection with the Prevention of Corruption Act, 1961, and any prescribed law, officers of the Bureau are given all the powers of a police officer[7] and a customs officer[8] appointed under the Police Act, 1967[9] and the Customs Act, 1967[10], respectively, and it is

[1] Act 57.

[2] s. 2.

[3] s. 3(2).

[4] s. 4.

[5] s. 5(1).

[6] s. 5(1).

[7] s. 5(2).

[8] s. 5(2).

[9] Act 41/67.

[10] Act 62/67.