

No. 22 of 1971
 IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
 FROM THE FEDERAL COURT IN MALAYSIA
 HOLDEN AT KUALA LUMPUR
 (APPELLATE JURISDICTION)

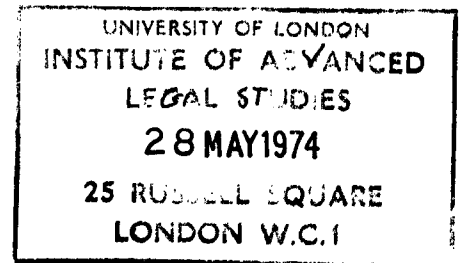
B E T W E E N

N. MAHADEVAN (lately an infant but now Appellant
 of full age) (Plaintiff)

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- AND -

1. K. ANANDARAJAN (Headmaster)
 King George V. School,
 Seremban and
2. THE MINISTER FOR EDUCATION,
 Malaysia and
3. BOARD OF GOVERNORS,
 King George V School,
 Seremban



Respondents
 (Defendants)

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CASE FOR THE APPELLANT

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1. This is an appeal by leave of the Federal Court in Malaysia from a judgment of that Court (Suffian, Acting Lord President, and Gill F.J.; Ali F.J. dissenting) dated the 12th day of February 1971, which allowed an appeal from the judgment of the High Court in Malaya at Seremban (Abdul Hamid, J.) dated the 5th day of September 1969.

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2. The action was brought in the High Court in Malaya at Seremban by the Appellant as Plaintiff, then suing by his father and next friend, claiming a declaration that an order of expulsion

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of the Appellant as a pupil from the King George V School Seremban, made by the First Defendant with effect from the 4th day of May 1968 and the decision of the Board of Governors made on the 1st day of June 1968, was null and void; an order that the Appellant be reinstated as a pupil in the King George V School, Seremban; damages; and costs.

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3. On the 5th day of July 1968, an order was made by consent reinstating the Appellant pending the hearing of the suit. The action was tried on the 19th and 20th days of August 1969 before Abdul Hamid J, who gave judgment on the 5th day of September 1969 declaring that the order of expulsion of the Appellant as a pupil from the King George V School Seremban, made by the First Respondent with effect from the 4th day of May 1968, was null and void; and ordering that the Appellant should be reinstated as a pupil in the King George V School Seremban and that the Respondents should pay the Appellant's costs. 10

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4. Regulation 8 of the Malaysian Education (School Discipline) Regulations 1959 provides so far as material that :

"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." 30

Regulation 10 provides that :

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5. The following facts were the subject of undisputed evidence. On the 2nd day of April 1968 the Appellant was a pupil at King George V School, Seremban; and the First Respondent was headmaster. A conversation took place on that day between the Appellant and the First Respondent in the latter's office. The school closed for the holidays between the 12th day of April 1968 and the 6th day of May 40

1968. On the 6th day of May 1968 the First Respondent announced the expulsion of a pupil and told the Appellant that he was being expelled. On the 8th day of May 1968, the First Respondent wrote to the Appellant's father informing him that the Appellant had been expelled with effect from the 4th day of May 1968. The Appellant's father appealed to the Board of Governors of King George V School, Seremban; the Board of Governors decided on the 1st day of June 1968 that the action taken by the First Respondent was fully justified. The Appellant's father is a member of the Board of Governors, but was not present when a vote was taken by the Board of Governors on that decision.

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6. The content of the conversation between the Appellant and the First Respondent on the 2nd day of April 1968 was disputed. The Appellant gave evidence that the First Respondent accused him of misbehaving at a "talentime" show the previous day, and that no other accusation was made; no indication was given that he was going to be expelled, save that the First Respondent scolded him and said "If you behave like this, you will be expelled." The First Respondent gave evidence that the purpose of his interview with the Appellant was to investigate allegations that the Appellant had misbehaved at the "talentime" show and that the Appellant denied some charges of misbehaviour at the show and admitted others. The First Respondent gave evidence that he put to the Appellant allegations that the Appellant had misbehaved on other occasions; as by getting into trouble with the Prefects' Board, skipping games, make unsatisfactory progress at academic work, and misbehaving in the physics laboratory. All the written evidence of the Appellant's alleged misconduct was dated after the 2nd day of April 1968, save for Ung Tat Hean's undated report. The First Respondent admitted that not all the allegations in that written evidence were put to the Appellant on the 2nd day of April 1968, and that the reports he received after the 2nd day of April 1968 contained some allegations of which he was unaware on the 2nd day of April 1968. He said that he told the Appellant on the 2nd day of April 1968 that he would "probably expel or take action - something to that effect"; and that he did not make a final decision to expel the Appellant before the 10th day of April 1968.

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7. As to the matters set out in Paragraph 6 hereof, Abdul Hamid J. made these findings of fact:

Pages 47,48 (i) that the Appellant in giving evidence denying the allegations of misbehaviour was not telling the truth, and that the First Respondent was justified in commencing proceedings to expel the Appellant and acted in good faith;

Page 50 (ii) that the Appellant had reason to believe on the 2nd day of April 1968 that the First Respondent might expel him, but that the Appellant did not realise then that the First Respondent was proposing to expel him; and that the First Respondent gave no definite indication or warning to the Appellant on the 2nd day of April 1968 that the Appellant would be expelled unless he could give an explanation. 10 20

8. Abdul Hamid, J. did not make any finding of fact as to whether the First Respondent had examined any or if so what allegations of misbehaviour (other than allegations relating to the Appellant's misbehaviour at the "talentime" show) with the Appellant on the 2nd day of April 1968.

Page 56 9. Abdul Hamid J. held that the rules of natural justice applied to the interview of the 2nd day of April 1968 so as to require the First Respondent to give adequate notice, which he failed to give, to the Appellant to enable him to appreciate the exact nature and purpose of the proceedings at the interview. 30

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Page 56 10. Abdul Hamid J. made no findings of fact as to the proceedings before the Board of Governors of the King George V School, Seremban; and made no decision as to the validity or otherwise of those proceedings.

Pages,22, 202 11. As to the proceedings at the Board of Governors' meeting, the Appellant's father and then next friend M. Nadchatiram gave evidence that he had appealed to the Board from the First Respondent's decision; that he had asked for the reasons for the Appellant's expulsion by a letter dated the 8th day of May 1968, by a letter of even date from his 40

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10 Solicitors, and by a letter of the 29th day of May 1968. Save for the contents of a school leaving certificate, the Appellant's father said that he was given no notice of the allegations as to the Appellant's behaviour before the Board of Governors met; and he was thus unable, in drawing up a written submission to the Board of Governors or in addressing the Board of Governors, to express himself other than in the most general terms. The evidence of the Appellant's father set out in this paragraph was not challenged in cross-examination, or contradicted by evidence given for the Respondents.

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12. The majority judgement of the Federal Court in Malaysia, which allowed the Respondent's appeal from the decision of Abdul Hamid, J., was given by Gill F.J., with whom Suffian, Acting Lord President, agreed.

20 13. There are two passages in the judgment of Gill F.J. upon which the Federal Court's decision appears to turn :

30 (i) "... the rules of natural justice did not require that the Appellant should have been given adequate notice of his impending expulsion. What the rules of natural justice required was that the nature of the accusations, as opposed to the punishment which could be inflicted upon him if those accusations were proved to be true, was made known to him. And there is ample evidence to show that he was told of specific instances of misbehaviour at the talentime show on 1st April, 1968, and other instances of misbehaviour on previous occasions."

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40 (ii) "... what the First Respondent was required to do in the observance of the rules of natural justice was to state the charges against the Appellant, which he clearly did.

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There is ample evidence to show that the Appellant did in fact answer all the charges The First Respondent stated in evidence that he expelled the Appellant because of the cumulative effect of his behaviour including reports about his being found

on two separate occasions with a girl in a closed class-room in defiance of what he was told not to do. And he went on to say that every time something had been brought up against the Appellant in the past, he was given a chance to answer. Admittedly, he consulted with his colleagues and obtained their reports as regards the general behaviour and conduct of the Appellant prior to his becoming the headmaster of the school on 1st January 1968, but there is not the slightest indication from the evidence that he did this in order to strengthen the case for the Appellant's expulsion. On the other hand, his evidence was that he decided to consult his colleagues in order to counter-check his convictions. This would seem to suggest that had the reports which he received from his colleagues been favourable the Appellant might never have been expelled It is contended ... that the Appellant should have been called upon to show cause why he should not be expelled. In other words, that contention is that the First Respondent, having held one inquiry on 2nd April 1968 to satisfy himself of the truth or falsity of the allegations against the Appellant on the basis of which he might make an order for the Appellant's expulsion, should have gone on to hold another inquiry merely to enable the Appellant to show cause why he should not be expelled. I do not agree with that contention

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14. It is submitted that in these passages the learned Federal Judge misdirected himself and otherwise fell into error.

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15. As to (i) above :

(a) the rules of natural justice did require that the Appellant be given adequate notice of his impending expulsion; without such notice, the Appellant (as Abdul Hamid, J. found) was unable to appreciate the nature and purpose of the proceedings which took place on the 2nd day of April 1968, and unable to argue in mitigation of punishment;

(b) the evidence as to whether or not the First Respondent put allegations of misbehaviour other than misbehaviour at the "talentime" show to the Appellant on the 2nd day of April 1968 was disputed, and that dispute was not resolved by Abdul Hamid, J.;

10 (c) further or in the alternative, the First Respondent admitted that there were allegations about the Appellant's behaviour other than at the "talentime" show of which he knew on the 2nd day of April 1968 which he did not put to the Appellant, and other like allegations of which he learnt after the 2nd day of April 1968 which were never put to the Appellant;

20 (d) further or in the further alternative, it is a reasonable inference from all the evidence that those allegations about the Appellant's behaviour, which were made in the written reports with dates later than the 2nd day of April 1968 and in Ung Tat Hean's undated report, were not put to the Appellant on the 2nd day of April 1968 in the detail shown in those reports; and that, if allegations about the Appellant's behaviour other than at the "talentime" show were put to the Appellant on the 2nd day of April 1968, they were not put in any or any sufficient detail.

30 16. As to (ii) above:

40 (e) Sub-paragraphs (b), (c) and (d) of Paragraph 15 hereof are repeated. There was no finding of fact by Abdul Hamid, J., and no or no sufficient evidence to show, that on the 2nd day of April 1968 the Appellant either answered all the charges against him of which the First Respondent then knew or answered the charges against him of which the First Respondent was then ignorant but subsequently learnt.

(f) The First Respondent had admitted that he did not ask the Appellant on the 2nd day of April 1968 about the allegation that the Appellant had been found with a girl in a closed class-room although he admitted that this was one of the reasons for which he expelled the Appellant.

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(g) Abdul Hamid, J., made no finding of

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fact as to whether the Appellant had been given a chance to answer "every time something came up against" him. The written reports do not show this; and no direct oral evidence of previous interviews was given at the hearing, which involved an inquiry as to whether the First Respondent had complied with the rules of natural justice in April 1968, nor whether there had been compliance with those rules on other earlier occasions.

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(h) The Headmaster admitted that even when an appeal against expulsion was to be lodged the parents of the Appellant and the Appellant were unaware of the charges against the Appellant.

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(i) The Learned Federal Judge misunderstood the argument which had been advanced for the present Appellant before the Federal Court; that argument was not that the rules of natural justice required the First Respondent to hold two separate inquiries into the Appellant's behaviour and punishment respectively, but that the interview of the 2nd day of April 1968 did not satisfy the requirements imposed by the rules of natural justice, and that its defects could only have been cured if a further interview had been held at which the Appellant was asked about those allegations about his behaviour which were not put to him on the 2nd day of April 1968 and/or discovered by the First Respondent after that date.

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17. It is submitted that further, or in the alternative, the Federal Court was wrong to allow the appeal and set aside the whole of Abdul Hamid, J's order. Even if the Federal Court were correct in concluding that Abdul Hamid J's application of the rules of natural justice to the facts which he found was wrong, the proper course was for the Federal Court to allow the appeal in part, and remit the case to the High Court in Malaya to hear and determine the following issues :

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(i) whether on the 2nd day of April 1968 the First Respondent asked the Appellant about all or a sufficient number of the allegations about the Appellant's

behaviour then known to the First Respondent; and, if so, whether the Appellant was asked about those allegations in sufficient detail;

10 (ii) whether the First Respondent learnt after the 2nd day of April 1968 of allegations about the Appellant's behaviour which the Appellant had not been asked about on the 2nd day of April 1968; and, if so, whether the First Respondent was obliged by the principles of natural justice to ask the Appellant about these allegations;

(iii) whether the proceedings at the Board of Governors' meeting complied with the principles of natural justice.

18. The Appellant submits that the judgment of the Federal Court in Malaysia is wrong and ought to be reversed or varied for the following among other
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R E A S O N S

30 (i) BECAUSE when Abdul Hamid, J., found that the Appellant was not given adequate notice so as to enable him to appreciate the exact nature and purpose of the proceedings on the 2nd day of April, 1968, the learned Judge was deciding a mixed question of law and fact; and the Federal Court in Malaysia was wrong to interfere with that finding;

(ii) BECAUSE Abdul Hamid, J. correctly directed himself as to the content of the rules of natural justice and as to the application of those rules to the facts which he found; and because the Federal Court in Malaysia misdirected themselves on these matters;

40 (iii) BECAUSE even if the Federal Court in Malaysia was right to decide that Abdul Hamid, J. had misdirected himself as to the content of the rules of natural justice or as to the application of those rules to the facts which he found, the Federal Court fell into error by making findings of fact which were the subject of disputed evidence and which Abdul Hamid, J. had

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not made; and further fell into error in failing to remit the case to the High Court in Malaya for that Court to hear and determine those questions and/or the question whether the proceedings of the Board of Governors were valid or invalid.

(iv) BECAUSE the judgment of the Federal Court in Malaysia was wrong and ought to be reversed or varied.

S.P. SEENIVASAGAM

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GEOFFREY SHAW

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B E T W E E N

N. MAHADEVAN (lately an infant but
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(Plaintiff)

- AND -

1. K.ANANDARAJAN (Headmaster)
King George V. School,
Seremban and
 2. THE MINISTER FOR EDUCATION
Malaysia and
 3. BOARD OF GOVERNORS;
King George V. School,
Seremban Respondents
(Defendants)
-

CASE FOR THE APPELLANT

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Solicitors for the Appellant