

JUDGMENT

LS

1973

No.22 of 1971

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL

FROM THE FEDERAL COURT IN MALAYSIA  
HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)

B E T W E E N:

N. Mahadevan, (an infant)  
suing by his father and  
next friend M. Nadchatiram

Appellant  
(Plaintiff)

- and -

1. K. Anandarajan, (Headmaster)  
King George V School,  
Seremban.
2. The Minister for Education,  
Malaysia.
3. Board of Governors,  
King George V School,  
Seremban.

Respondents  
(Defendants)

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
28 MAY 1974  
25 RUSSELL SQUARE  
LONDON W.C.1

RECORD OF PROCEEDINGS

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Solicitors for the Appellant

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Solicitors for the Respondent

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT IN MALYSIA  
HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)

---

BETWEEN

N. Mahadevan (an infant)  
suing by his father and  
next friend M. Nadchatiram

Appellant

AND

1. K. Anandarajan, (Headmaster)  
King George V School,  
Seremban.
2. The Minister for Education,  
Malaysia.
3. Board of Governors,  
King George V School,  
Seremban.

Respondents

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RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
<u>IN THE HIGH COURT OF MALAYA</u>			
1.	Writ of Summons	13th June, 1968	1
2.	Statement of Claim	13th June, 1968	5
3.	Summons-in-Chambers	29th June, 1968	7
4.	Authority of Next Friend	13th June, 1968	8
5.	Certificate of Solicitor	13th June, 1968	9

(ii)

No.	Description of Document	Date	Page
6.	Proceedings of Summons in Chambers. (Document No.3)	5th July, 1968	9
7.	Proceedings of Summons in Chambers (In Open Court)	5th July, 1968	10
8.	Order Made in Chambers before S.M. Yong, J.	5th July, 1968	15
9.	Statement of Defence	12th August, 1968	16
10.	Proceedings of Writ of Summons	19th August, 1969	17
<u>PLAINTIFF'S EVIDENCE</u>			
11.	Nadchatiram Mahadevan	19th August, 1969	18
12.	Nadchatiram s/o Muttucumaru	19th August, 1969	22
<u>DEFENDANTS EVIDENCE</u>			
13.	Anandarajan s/o Krishnan	20th August, 1969	25
14.	Dato Abdul Jalil bin Haji Aminuddin	20th August, 1969	35
15.	Defence Submission	20th August, 1969	36
16.	Plaintiff's Submission	20th August, 1969	38
17.	Judgment of ABDUL HAMID, J.	5th September, 1969	40
18.	Order of the High Court	5th September, 1969	57
Item	Description	Date	Page
<u>IN THE FEDERAL COURT OF MALAYSIA</u>			
19.	Notice of Appeal	20th September, 1969	59
20.	Memorandum of Appeal	28th October, 1969	61

## (iii)

Item	Description	Date	Page
21.	Written Submission by the Attorney General for the Appellants	20th April, 1970	62
22.	<u>NOTES OF ARGUMENT RECORDED BY SUFFIAN AG. LORD PRESIDENT</u>	20th, 21st & 2nd April, 1970	80
23.	<u>NOTES RECORDED BY GILL, F.J.</u>	20th, 21st, 22nd April, 1970	92
24.	<u>NOTES OF ALI, F.J.</u>	20th, 21st & 22nd April, 1970	102
25.	JUDGMENT OF SUFFIAN ACTING LORD PRESIDENT	12th February, 1971	111
26.	JUDGMENT OF GILL, F.J.	12th February, 1971	112
27.	JUDGMENT OF ALI F.J.	12th February, 1971	128
28.	ORDER OF THE FEDERAL COURT	12th February, 1971	142
29.	NOTICE OF MOTION	9th March, 1971	143
30.	Affidavit of M.Nadchatiram	4th March, 1971	145
31.	Order granting conditional leave to Appeal to His Majesty the Yang di-Pertuan Agong	22nd March, 1971	148
32.	Order granting final leave to Appeal to His Majesty Yang Di-Pertuan Agong	7th July, 1971	150

(iv)

PART 2

E X H I B I T S

No.	Description of Documents	Date	Page
	<u>PLAINTIFF'S EXHIBITS</u>		
P1	<u>Agreed Bundle of Documents and Letters</u>		
	Affidavit of M. Nadchatiram	13th June, 1968	152
	Leaving Certificate A1	4th May, 1968	157
	Police Report by Mahadevan A2	10th April, 1968	158
	Medical Report on Mahadevan	2nd April, 1968	160
	Affidavit of Anandarajan	4th July, 1968	162
	Report on Mahadevan by Ung Tat Hean	(undated)	167
	Confidential Report on Mahadevan by Kenneth Dressen	15th April, 1968	170
	Confidential Report on Mahadevan by Hilary S. Ong	2nd April, 1968	171
	Confidential Report on Mahadevan by Chan Kwai	17th April, 1968	172
	Confidential Report on Mahadevan and two others by School Captain	20th April, 1968	174
	Confidential Report on Mahadevan and three others	20th April, 1968	175
	Notice of Meeting of Board of Governors	17th April, 1968	176
	Statement by K. Yogeswari	20th May, 1968	177
	Statement by Santo Keur	20th May, 1968	177
	Statement by Rosnah Rashid	11th May, 1968	178

(v)

No.	Description of Documents	Date	Page
P1	Statement by N.Mahadevan	(undated)	179
	Letter to Kenneth Dressen by M/s. Nadchatiram Brothers	14th May, 1968	179
	Letter to K. Loganathan by M/s. Nadchatiram Brothers	14th May, 1968	180
	Affidavit of Dato' Abdul Jalil bin Haji Aminuddin	4th July, 1968	181
	Letter from Chairman Board of Governors to N.Nadchatiram	1st June, 1968	186
	Affidavit of M. Nadchatiram	4th July, 1968	187
	Letter to Headmaster by M/s. Seenivasagam & Sons	8th May, 1968	189
	Affidavit of N. Mahadevan	5th July, 1968	191
	Joint Affidavit of J. Nad- chatiram and Madam Jane Tong	May, 1968	196
	Affidavit of Norliah bte Haji Ahmad	4th July, 1968	197
P2	Letter from Headmaster to M. Nadchatiram	8th May, 1968	199
P3	Leaving Certificate	4th May, 1968	200
P4	Letter to Chairman by M. Nadchatiram	7th May, 1968	201
P5	Appeal to Board of Governors	8th May, 1968	202
P6	Letter to Headmaster by M/s. Seenivasagam & Sons	8th May, 1968	202
P7	Letter by M. Nadchatiram to Members of Board of Governors	29th May, 1968	204

(vi)

No.	Description of Documents	Date	Page
P8	Letter to M. Nadchatiram from Chairman, Board of Governors	1st June, 1968	210
P9	Petition of Appeal to Board of Governors (Exhibits A, B & C attached)	25th May, 1968	211
	<u>DEFENDANTS' EXHIBITS</u>		
D10	Minutes of Meeting of Board of Governors	10th June, 1968	219
D12	Minutes of Meeting of Board of Governors	21st May, 1968	222

(END)

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, (an infant)  
suing by his father and  
next friend M. Nadchatiram Appellant

- and -

1. K. Anandarajan, (Headmaster)
2. The Minister for Education,  
Malaysia.
3. Board of Governors Respondents

---

RECORD OF PROCEEDINGS

---

No. 1

WRIT OF SUMMONS

IN THE HIGH COURT IN MALAYA AT SEREMBAN

CIVIL SUIT NO: 101 of 1968

Between

N. Mahadevan (an infant)  
suing by his father and  
next friend M. Nadchatiram Plaintiff

And

1. K. Anandarajan, (Headmaster)
2. The Minister for Education,  
Malaysia.
3. Board of Governors Defendants

In the High  
Court in  
Malaya

No. 1

Writ of  
Summons

13th June  
1968



In the High Court in Malaya

No.1

Writ of Summons

13th June 1968

(continued)

The Honourable Tan Sri Azmi bin Haji Mohamed, D.P.M.K., P.S.B., P.J.K., Chief Justice of the High Court in Malaya in the name and on behalf of His Majesty the Yang di-Pertuan Agong..

To:

- 1. K. Anandarajan, (Headmaster) King George V School, Seremban.
- 2. The Minister for Education, Malaysia.
- 3. Board of Governors, King George V School, Seremban.

10

WE COMMAND you, that within eight (8) days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of N. Mahadevan, (an infant) suing by his father and next friend M. Nadchatiram, who resides at No. 1 Jalan Atas, Seremban.

20

AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS, LEE MOH WAH, Assistant Registrar of the High Court of Malaya this 13th day of June, 1968.

Sd: Saraswathy Devi & Co.

Plaintiff's Solicitors

Sd: Illegible

Assistant Registrar, High Court, Seremban.

30

N.B. This writ is to be served within twelve months from the date thereof, or, if renewed, within six months from the date of last renewal, including the day of such date and not afterwards.

The Defendants may appear hereto by entering appearances either personally or by solicitors at the Registry of the High Court at Seremban.

A Defendant appearing personally may if he desires enter his appearance by post and the appropriate forms may be obtained by sending a Postal Order of \$3.00 with an addressed envelope to the Assistant Registrar of the High Court at Seremban.

In the High Court in Malaya

No.1

Writ of Summons

13th June 1968

(Continued)

If the Defendant enters an appearance he must also deliver a defence within fourteen days from the last day of the time limited for appearance unless such time is extended by the Court or a Judge, otherwise judgment may be entered against him without notice, unless he has in the meantime been served with a summons for Judgment

INDORSEMENT

The Plaintiff claims :-

- (1) for a declaration that the order of expulsion of the Plaintiff as a pupil from the King George V School, Seremban, made by the 1st 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, is null and void and of no effect.
- (2) for an order that the Plaintiff be reinstated as a pupil in the King George V School, Seremban, forthwith.
- (3) Damages.
- (4) Costs.

Dated this 13th day of June, 1968.

Sd: Saraswathy Devi & Co.  
.....  
Plaintiff's Solicitors

And the sum of \$ (or such sum as may be allowed on taxation) for costs, and also, in case the Plaintiff obtains an order for substituted service, the further sum of \$ (or such sum as may be allowed on taxation).

If the amount claimed be paid to the Plaintiff or his advocate and solicitor or agent within four days from the service hereof, further proceedings will be stayed.

In the High  
Court in  
Malaya

No. 1

Writ of  
Summons

13th June  
1968  
(continued)

Provided that if it appears from the indorsement of the Writ that the Plaintiff is resident outside the scheduled territories as defined in the Exchange Control Ordinance, 1953, or is acting by order or on behalf of a person so resident, proceedings will only be stayed if the amount claimed is paid into Court within the said time and notice of such payment is given to the Plaintiff, his advocate and solicitor or agent.

10

The Writ was issued by Messrs. Saraswathy Devi & Co., whose address for service is at No.9 Cameron Street, Seremban, Solicitors for the said Plaintiff who resides at No. 1, Jalan Atas, Seremban.

This Writ was served by me at  
on the 1st Defendant  
on the                    the                    day of  
1968 at the hour of  
Indorsed this                    day of  
1968  
(Signed)  
(Address)

20

This Writ was served by me at  
on the 2nd Defendant  
on the                    the                    day of  
1968 at the hour of  
Indorsed this                    day of  
1968  
(Signed)  
(Address)

30

This Writ was served by me at  
on the 3rd Defendant  
on the                    the                    day of  
1968 at the hour of  
Indorsed this                    day of  
1968  
(Signed)  
(Address)

This Writ was served by me at  
on the                    Defendant  
on the                    the                    day of  
1968 at the hour of  
Indorsed this                    day of  
1968  
(Signed)  
(Address)

40

STATEMENT OF CLAIMIn the High  
Court in  
Malaya

No. 2

Statement  
of Claim13th June  
1968

1. The Plaintiff, N. Mahadevan, is a minor and sues through his next friend and father, M. Nadchatiram, both residing at No.1, Jalan Atas, Seremban.

10 2. The 1st Defendant is the Headmaster of the King George V School, Seremban, the 2nd Defendant is the Minister for Education, joined as a party in these proceedings as a person interested being the Minister in charge and control of educational institutions and educational authorities in Malaysia, and the 3rd Defendant is the Board of Governors of the King George V School, Seremban, (hereinafter referred to as "the said School").

20 3. The Plaintiff was at all times a pupil of the said school until 6th day of May, 1968, when the 1st Defendant unlawfully, maliciously and without any valid reason expelled the Plaintiff from the said school.

4. The Plaintiff had been a pupil of the said school since January, 1957, and was a Lower Form Six (Science) pupil until the 6th day of May 1968.

30 5. On the morning of 6th May, 1968, the 1st Defendant made an announcement in the said school hall that he was going to expel a pupil and thereafter called the Plaintiff into his room and told the Plaintiff that he has been expelled.

6. On the 8th day of May, 1969, Mr. M. Nadchatiram, the father of the Plaintiff received a letter from the 1st Defendant that the Plaintiff has been expelled from the said school with effect from the 4th day of May, 1968.

7. Mr. M. Nadchatiram appealed against the expulsion on the 8th day of May, 1968, to the Board of Governors of the said school pursuant to Rule 10(1) of the Education (School Discipline) Regulations, 1959.

In the High  
Court in  
Malaya

No. 2

Statement  
of claim  
13th June  
1968  
(continued)

8. Mr. M. Nadchatiram has requested the 1st Defendant to give his reasons for expelling the Plaintiff from the said school, but the 1st Defendant has failed or neglected to produce his reasons.

9. The Plaintiff states that the first Defendant has acted maliciously, capriciously, wrongfully and without any lawful reasons in his purported expulsion of the Plaintiff from the said school.

10

10. In pursuance of the appeal by Mr. M. Nadchatiram, the Board of Governors, i.e. the 3rd Defendant, met and decided that the action taken by the 1st Defendant in expelling the Plaintiff is fully justified and this decision conveyed to Mr. M. Nadchatiram by a letter dated the 1st day of June, 1968.

11. The Plaintiff states that the 1st and 3rd Defendants have acted unlawfully and against the rules of natural justice since no charges were levelled against the Plaintiff at any time and the First Defendant has failed to give his reasons for his unlawful and malicious act.

20

12. The Plaintiff and his guardian were never given an opportunity to answer any of the charges or accusations against the Plaintiff. At no time were either of them made aware of any charges, or accusations or allegations of misconduct.

30

13. As a result of the unlawful act of the 1st Defendant the Plaintiff has suffered mental pain and suffering and humiliation.

Wherefore the Plaintiff prays:

- (a) for a declaration that the order of expulsion of the Plaintiff as a pupil from the King George V School, Seremban, made by the 1st 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, is null and void and of no effect.

40

(b) for an order that the Plaintiff be reinstated as a pupil in the King George V School, Seremban, forthwith.

(c) Damages.

(d) Any further order that this Honourable Court deems fit.

(e) Costs.

Dated this 13th day of June, 1968.

In the High Court in Malaya

No.2

Statement of Claim

13th June 1968

(continued)

Sd: Saraswathy Devi & Co.

.....

Solicitors for the Plaintiff

No.3

SUMMONS-IN-CHAMBERS

APPLICATION BY PLAINTIFF FOR INTERIM ORDER

LET ALL PARTIES CONCERNED attend the Judge in Chambers at the High Court at Kuala Lumpur, on Saturday the 29th day of June, 1968, at 10.00 o'clock in the fore noon on the hearing of an application on the part of the Plaintiff for an interim order that the Plaintiff, N. Mahadevan, be reinstated into the King George V School, Seremban, forthwith pending the trial of the action herein, and that the Defendants do pay to the Plaintiff the costs of and incidental to this application.

Dated this 26th day of June, 1968.

No. 3

Summons-in-Chambers Application by Plaintiff for Interim Order  
26th June 1968

10

20

In the High Court in Malaya

Sd: Saraswathy Devi & Co.

Sd. Lee Moh Wah

.....

.....

Plaintiff's Solicitors

Assistant Registrar

High Court

Seremban

No.3 Summons-in-Chambers Application by Plaintiff for Interim Order

26th June 1968

(continued)

This Summons in Chambers was taken out by Messrs. Saraswathy Devi & Co., Solicitors for the Plaintiff, whose address for service is No.9 Cameron Street, Seremban.

This Summons in Chambers is supported by the Affidavit of M. Nadchatiram affirmed on the 13th day of June, 1968, and filed herein.

10

No.4

No.4

Authority of Next Friend

AUTHORITY OF NEXT FRIEND

13th June 1968

I, M. Nadchatiram, a business man, of Malaysian Nationality, and residing at No.1 Jalan Atas, Seremban, hereby authorise Miss N. Saraswathy Devi of No. 9, Cameron Street, Seremban, Solicitor, to use my name as Next Friend of the above-named Plaintiff, N. Mahadevan, an infant, against the above-named Defendants 1. K. Anandarajan (Headmaster) King George V School, Seremban, 2. The Minister for Education, Malaysia and 3. Board of Governors, King George V School, Seremban, for:

20

- (a) a declaration that the order of expulsion of the Plaintiff as a pupil from the King George V School, Seremban, made by the 1st 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, is null and void and of no effect.

30

No. 5

CERTIFICATE OF SOLICITOR AS TO NEXT FRIEND OF  
INFANT

In the High  
Court in  
Malaya

No.5

Certificate of  
solicitor as  
to next friend  
of infant  
13th June 1968

I, Jegadevan Nadchatiram, a solicitor of the High Court, hereby certify that :-

1. I know that N. Mahadevan of No.1, Jalan Atas, Seremban, is an infant.
2. M. Nadchatiram of No.1, Jalan Atas, Seremban, has no interest in the cause or matter in question adverse to that of the infant.

10

Dated this 13th day of June, 1968.

Sd. Jegadevan Nadchatiram  
Advocate & Solicitor,  
No. 133 Paul Street,  
Seremban.

This Certificate is filed by Messrs. Saraswathy Devi & Co., Advocates & Solicitors for and on behalf of the Plaintiff, and whose address for service is at No. 9, Cameron Street, Seremban.

20

No. 6

PROCEEDINGS OF SUMMONS IN CHAMBERS (DOCUMENT  
NO. 3 ON PAGES 7 & 8)

No.6

Proceedings of  
Summons in  
Chambers  
(Document No.  
3 on pages  
7 & 8)  
5th July 1968

Parties:

N.Mahadevan (infant) by his father and  
next friend Mr. Nadchatiram                      Plaintiff

1. K.Anandarajan (Headmaster)
2. Minister of Education, Malaysia.
3. Board of Governors, King George V  
School Seremban                                      Defendants

30

Dato Seenivasagam & Devi for  
Plaintiff    Applicant

Ajaib Singh for Defendant                              Respondents



In the High  
Court in  
Malaya

No. 6

Proceedings of  
Summons in  
Chambers  
(Document No.  
3 on pages  
7 & 8)  
5th July 1968  
(continued)

Seenivasagam: Affidavits were served on him only  
yesterday and he asks the matter be  
adjourned to open Court.

Ajaib Singh: Agrees.

By consent, adjourned to Open Court  
for argument.

Signed: S.M.Yong, J.  
5.7.68.

No. 7

Continuation  
of hearing of  
Summons in  
Chambers in  
Open Court  
5th July 1968

No. 7

CONTINUATION OF HEARING OF SUMMONS IN CHAMBERS  
IN OPEN COURT

10

Parties as before

Seenivasagam asks leave to examine  
Anandarajan on his affidavit.

Ajaib Singh has no objection.

K. Anandarajan affirmed speaks in English.

Cross-examination by Seenivasagam.

Since 1.1.68 I was and am headmaster of King  
George V School, Seremban. School has 1,682  
pupils. The plaintiff was one of them. I have  
not known him before 1.1.68. He was a science  
student. I became headmaster of this school  
since 1.1.68. I have not paid any particular or  
special attention to any boy. I have not  
specifically observed or paid any attention to  
plaintiff. Before 10.4.68 I have received several  
complaints against the plaintiff. Normally  
trifle complaints are dealt with by the prefects  
board. I would only deal with it when the prefects  
board refers the complaints to me. I do not know  
whether the board keeps or does not keep a record  
of complaints. They are responsible to the  
headmaster. I do not know whether this board  
keeps a record of the complaints made against  
plaintiff.

20

30

In this case Greason, a former teacher has complained to me that the plaintiff had come late to school. If a pupil comes late to class, his teacher could complain direct to me against him. Before 10.4.68 I did receive from the teacher that the plaintiff had come late, but I have not brought my records with me and cannot give the dates. At 7.30 a.m. sharp, the school gate would be closed and locked. Late comers would have to ask the prefects to open the gate, and their names would be taken down. The names of teachers who come late would also be taken down, but no action would be taken against them.

In the High  
Court in  
Malaya

No. 7

Continuation  
of hearing of  
Summons in  
Chambers in  
Open Court  
5th July 1968

(continued)

I now read paragraph 3 of my affidavit. On two occasions I reported to the plaintiff's father - once by phone, and once when his father came to interview me. On the first occasion, I telephoned to plaintiff's father. It was the 2nd or 3rd, or 3rd or 4th of April 1968. This was the first time I had spoken to him by phone. It was about the plaintiff's behaviour at the talent time show. The telephone conversation was that plaintiff had interrupted the show. On the other occasion I drew his attention to the boy's earlier behaviour.

At this earlier meeting sometime in March, I informed the parent, of his son's defiance to authority, to teachers and to the prefects board. I told the boy's father that the boy was rude to the prefects. I did not tell him how he was rude. I cannot remember now the instances of his defiance to authority and to the teachers. I remember plaintiff's sister came to see me, about plaintiff's punishments in having to pick up rubbish from the school compound in full view of other pupils junior to him. The reason for his punishment was that plaintiff had failed to put on the school badge. His sister came and complained that the punishment was unfair and humiliating. These two complaints were the only complaints I made to the plaintiff's parents and no others.

I am not belittling the plaintiff's success. I am not sure that there were 210 students sitting for the Cambridge School Certificate in 1967 and only 29 students obtained Grade I. I will not concede that plaintiff by being one of the 29 was a good student for his achievement. I am not trying to belittle his work. I share the opinion of the form

In the High  
Court in  
Malaya

No. 7

Continuation  
of hearing of  
Summons in  
Chambers in  
Open Court  
5th July 1968  
(continued)

teachers that plaintiff was childish. I did not make allowance for him because he was childish. I did try to change his outlook by taking him to my house to play chess. This is to reorientate him. I am a chess player myself and I like to play with him because he was a school champion in Chess for 3 years. I cannot say which was the most serious complaint against him. I expelled him from the school because of the cumulative effect. I rely on the reports I received in expelling him from school. I have not heard more serious complaints against plaintiff than those disclosed in my affidavit.

10

The report B1 attached to my affidavit was not received by me after I have expelled the plaintiff. The complaints were reduced into writing after the plaintiff's inspection. I had them reduced into writing for the purpose of the record and for supporting the expulsion. The complaints were verbally made to me in January 1968. For the purpose of the record I did not ask them to put them into writing in January, but only after I had expelled the plaintiff. One of the reason was that he was found in a class room with a girl. This took place in November or December 1967. The previous headmaster said that he left this matter to me. I did not deal with this matter until the question of expulsion came up. I made use of these complaints against him although they took place prior to my becoming the headmaster of the school. This incident of the girl with the plaintiff had been dropped by the previous headmaster (see bottom of B1) and I revived it when the question of expulsion came up. I did not revive this complaint until April 1968.

30

I think the boy (the plaintiff) was a spoilt child and I would not say that he was immoral or that there was any immoral relationship between him and the girl.

I have read the affidavit of Norliah binte Haji Ahmad affirmed on 4.7.68. I am satisfied that nothing immoral took place in that room.

40

I had received a copy of a police report some-time on or about 15th of April, 1968. That report I received made me furious that one of my own pupils had made a report against me. I deny that because of this I try to expel him. I have decided

earlier to expel him. I have no written record to show that I have decided to expel him, before I had received that police report.

I was not annoyed but amused that plaintiff's brother was taking a keen interest in my caning the girls. I admit that I did cane the girls. I know "corporal" punishment with hurt is prohibited. My motive for caning them was to humiliate the girls.

10 I did hold an enquiry before expelling the plaintiff. The enquiry took place from 2nd to the 13th of April 1967. At this enquiry I have not asked the plaintiff or his parents to be present. I did give a chance to the plaintiff or his parents to explain. After I have made the expulsion order, I sent a copy of the order to the plaintiff's parents and told them that they could appeal. The order was the expulsion order. It merely stated that their son the plaintiff had been expelled from the school and that if they were not satisfied they  
20 could appeal.

Shortly after this I received a letter from Seenivasagam & Sons dated 8.5.1968. That letter is attached to Nadchatiram's affidavit affirmed on 5.7.68.

I did not reply to that letter. It is not obligatory to reply. That letter asked me to tell the plaintiff the grounds of his expulsion. I did not reply, but I did reply to say that the plaintiff had been expelled. I did not give any  
30 grounds for his expulsion.

(Witness is asked to read the minutes of the School Board Meeting of King George V School Seremban dated 7.5.68).

This Board is the Board of Governors of the School. I keep this minute book myself. I am not disputing the correctness of the minutes.

I now read the letter dated 29.5.68 from the plaintiff's father to the Board of Governors. This is the letter (D1). This letter did say :-

40 "You want Mahadevan and his father to appeal. How do you expect them to appeal. What are the charges against the student."

In the High Court in Malaya

No. 7

Continuation of hearing of Summons in Chambers in Open Court 5th July 1968

(continued)

In the High  
Court in  
Malaya

No. 7

Continuation  
of hearing of  
Summons in  
Chambers in  
Open Court  
5th July 1968  
(continued)

Even at that stage the plaintiff and his parents did not know what the charges against the plaintiff were.

At the talent time contest or show the plaintiff said he was not well and wanted to go home. I asked him to go to the library. I admit that subsequently I learned that the plaintiff had fainted and was treated by a medical practitioner.

I agree that if the plaintiff is sent to another school he will have to go outside the State of Negri Sembilan. I recommended him to the Board of Governors that he be allowed to go to another school, and the Board agreed. Although I consider him unfit for our school, I consider him fit for another school (?).

10

(Adjourned for 10 minutes to  
enable parties to settle).

Court resumes hearing

Parties as before

Ajaib Singh and Seenivasagam report  
settlement as follows :-

20

By Consent

- (1) Plaintiff to be reinstated pending hearing of this suit.
- (2) Plaintiff to remain subject to school rules, regulations and discipline.
- (3) Liberty to either party to apply.
- (4) No order as to costs of this Motion.

Order ss agreed.

Signed: S.M. Yong, J.

30

5.7.68.

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No. 8

ORDER MADE IN CHAMBERS BEFORE S.M. YONG J.In the High  
Court in  
MalayaNo. 8Order made in  
Chambers  
before S.M.  
Yong J.  
5th July 1968

10 UPON READING the Summons-in-Chambers dated the 26th day of June, 1968, the Affidavit of M. Nadchatiram affirmed on the 13th day of June, 1968, the Affidavit of Norliah bte Haji Ahmad affirmed on the 4th day of July, 1968, the Affidavit of N. Mahadevan affirmed on the 5th day of July, 1968, the Affidavit of K. Anandarajan affirmed on the 4th day of July, 1968, the Affidavit of Dato' Abdul Jalil bin Haji Aminuddin affirmed on the 4th day of July, 1968 and filed herein AND UPON HEARING Dato' S.P. Seenivasagam, of Counsel for the Plaintiff and Mr. Ajaib Singh, Senior Federal Counsel, of Counsel for the Defendants and upon cross-examination of K. Anandarajan on his Affidavit, IT IS ORDERED by consent that :-

- 20 (i) The Plaintiff be reinstated in the King George V School, Seremban pending the final hearing and determination of the above suit;
- (ii) The Plaintiff to remain subject to the School rules, regulations and discipline;
- (iii) Liberty to either party to apply;
- (iv) No order as to costs of this application.

Given under my hand and the seal of the Court this 5th day of July, 1968.

Sd: Chan Huan Eng  
Assistant Registrar,  
High Court,  
Seremban.

In the High  
Court in  
Malaya

No. 9  
Statement of  
Defence  
12th August  
1968.

16.

No. 9

STATEMENT OF DEFENCE

1. The Defendants admit paragraphs 1 and 2 of the Statement of Claim.
2. With regard to paragraph 3 of the Statement of Claim the Defendants aver that the Plaintiff was a pupil of the King George V School until the 4th May 1968, however, the Defendants deny that the 1st Defendant unlawfully, maliciously and without any valid reason expelled the Plaintiff from the said school. 10
3. The Defendants deny that the 1st Defendant acted maliciously, capriciously wrongfully and without any lawful reasons in expelling the Plaintiff from the said school.
4. The Defendants admit paragraph 10 of the Statement of Claim.
5. The Defendants deny that the 1st and the 3rd Defendants acted unlawfully and against the rules of natural justice. 20
6. The Plaintiff and his guardian were given an ample opportunity to present their appeal to the Board of Governors in accordance with the Education (School Discipline) Regulations, 1959.
7. No admission is made as of any mental pain and suffering and humiliation as alleged.
8. Save as is hereinbefore expressly admitted, the Defendants deny each and every allegation of fact contained in the Statement of Claim as if the same were set forth herein and specifically traversed. 30
9. The Defendants pray that the Plaintiff's claim be dismissed with costs.

Dated this 12th day of August, 1968.

Sd: Illegible  
Senior Federal Counsel,  
For and on behalf of the Defendants whose  
address for service is c/o Attorney-General's  
Department, Kuala Lumpur.





In the High Court in Malaya

NADCHATIRAM MAHADEVAN

Plaintiff's Evidence

P.W.1. Nadchatiram Mahadevan: a/s in English:-

No. 11

19 years - No. 1, Jalan Atas, Seremban. Student at K.G.V. Seremban. Joined in 1963, Form i. Actually joined school in 1957.

Nadchatiram Mahadevan Examination 19th August 1969

I remember on 6.5.68 the Headmaster announced that a student was expelled. He called me to his office and told me that I was expelled; asked me to get my books and get out. He did not give me leaving certificate. My father subsequently received a letter with a leaving certificate - produced - letter P2, certificate P3.

10

Before 6.5.68 no indication was given that I was to be expelled. I was never told of any reason why I was expelled. My father was never informed that I was going to be expelled. No charges were levelled against me and I was not asked to explain.

My father appealed against the decision of the Headmaster. I am aware that the Board of Governors subsequently met to consider the appeal. Neither I nor my father was given the chance to explain. The Board later confirmed the decision of the Headmaster. I have not done anything in school to justify my expulsion.

20

Cross-examination

XXN.

My father appeared before the Board. He was a member of the Board. I do not know whether he appeared as an appellant or as a member of the Board.

30

Questioned whether the witness was aware of any reason to justify his expulsion from school, witness answered that there was no reason to justify the Headmaster expelling him.

One day the Headmaster called me to his office and he harassed me. The Headmaster also called two of my friends, Vijayapal Singh and Ng Kim Swee. It was in connection with a mishap at the School Talentime held at the Town Hall. In the office the Headmaster scolded the three of us. There was a penknife on the table. The Headmaster took the

40

knife and pointed at us and told us that one of these days we will be stabbed by that knife. He then asked both my friends to go out and started shouting at the top of his voice and scolding me. As a result, I broke down. I started crying. He then asked me to go. I went out, washed my face and felt giddy. I went back to the Headmaster's office and asked for permission to leave the school as I was not feeling well. He refused to allow me and asked me to sit in the library. I sat in the library. He came to the library and called me to his office. He caught my right hand and asked me to swear on the life of my mother that I did not misbehave at the talentime show. I swore. I again asked for permission to leave. He refused. He then asked me to leave the office. I went to the school hall. When the school finished at 1.10p.m. I asked my friend Kim Swee to accompany me home. While on the way home, I collapsed on Kim Swee's shoulder. I was taken home by a passing car. My father then made a report to the Chief Education Officer. No action was taken. I reported to the ppolice. This happened in April, 1968. The 6th of May was the first day at school after the school holidays commencing on 12th April.

The Headmaster scolded me by using abusive language. He said if you behave like this you will be expelled.

There was a talentime show where I was present. Among those present were ex-K.G.V. students and students from St. Paul's. I sat at the \$3/- seat. I paid for \$2/- seat. I was not asked to move out. As the talentime show was going on, these boys - the ex-Georgians - were shouting and at the same time disturbing the Head Prefect who was seated close to where I was. His name is Hin Voon How.

Refers p.29 of Pl. I do not know whose report this is.

I am saying that the Head Prefect being unable to take action against those boys made a report blaming me, Kim Swee, Vijayapal Singh and Allan Tong.

The Headmaster accused me of misbehaving at the talentime show. He first accused me, then started scolding. There was no other charge or accusation levelled against me on that day. The Headmaster never advised me. He only said that "at the rate you

In the High  
Court in  
Malaya

Plaintiff's  
Evidence

No. 11

Nadchatiram  
Mahadevan  
Cross-  
examination  
19th August  
1969

(continued)

In the High  
Court in  
Malaya

Plaintiff's  
Evidence

No. 11

Nadchatiram  
Mahadevan  
Cross-  
examination  
19th August  
1969

(continued)

are going on, one of these days you'll find this knife stabbed at your back". I was scared.

I lodged a police report because he asked me to swear on the life of my mother.

There was another incident five or six months before my expulsion. I remember sitting with a girl in a class, with doors closed, but window shutters opened. She was also a student of King George V then. The Assistant Headmaster found me sitting there. I have read his report (p.23 of Pl). I do not agree with certain things there. 10

(Witness reads the report - p.29). This is a fabrication by the Assistant Headmaster. I do not know why he should fabricate. I do not know what he has in his mind. As regards the incident, I do not agree with what he said that I answered we were revising chemistry. His version of the incident is not true. It is true that we were alone in the class.

I do not agree with what he said about the second incident. The door was not locked, but it could not be opened from outside. The handle was broken. I also do not agree that the keyhole was stuck with paper. I am not aware that the keyhole was stuck with paper. I do not agree that there was persistent banging. He did not reprimand any of us. 20

As to the third incident, I disagree I went there to borrow a physics practical book.

As to paragraph 2 of the third incident, it was true but I was not in the wrong. 30

These incidents could be one of the grounds for my dismissal.

I am not aware of any report by Hilary S. Ong. He was my physics master. He taught me in Forms IV, V and Lower VI. He has ill-feelings against me. Once when I was in Form V he asked me what my ambition was. I told him I wanted to be a doctor. He told me not to waste my time in science class. He told the whole class that the reason why I wanted to be a doctor was because I wanted to have a swanky time with the nurses. 40

There was another incident when I was in Lower 6. He asked me "how many lawyers we have in the family". I told him that we have two brothers and three sisters. He suggested that I should take up law. He told me that if I were to do medicine the Malayan University would be producing hopeless doctors. All the time he was discouraging me.

In the High  
Court in  
Malaya

Plaintiff's  
Evidence

No. 11  
Nadchatiram  
Mahadevan  
Cross-  
examination  
19th August  
1969

(continued)

Refers to report on p.26 of Pl. I do not agree with the opinion expressed in that letter.

10 Refers to letter on p.27 of Pl. I disagree with the report except that I did yawn and sometimes dream.

Refers p.28 of Pl. I do not agree with certain things like making rude faces as alleged in the report, but I did make funny faces. I did ask the driver to horn.

I deny however that I walked away while the school captain was still engaged in conversation.

Refers to report on p.25 of Pl. I do not know why he made adverse report against me.

20 To a certain extent, the report that I was late in class and yawning is true.

Perhaps these were the reasons that I was expelled from the school.

The Headmaster was charged for assault in Court. I withdrew the charge because I wanted to establish good relationship with the teachers and headmaster. The case came up after one month after I was temporarily reinstated.

30 I am the youngest in the family - the pet of the family.

RE-EXAM:

Re-  
examination.

When I used the word "fabricated" I meant made up.

Refers p.28 of Pl. I did not refuse to stop at check-point.

I have known Norliah for the whole of 1967. I did not have any intention of improper conduct when I closed the door. The students were coming and disturbing.

In the High  
Court in  
Malaya

Plaintiff's  
Evidence

No. 11

Nadchatiram  
Mahadevan  
Re-

examination  
19th August  
1969

(continued)

Refers P.23 of Pl. I was not revising chemistry but additional maths. My syllabus did include chemistry.

I did not block the holes with paper. Even if they were I did not do it.

Refers P.27 of Pl. I admit yawning on occasions. It was a natural process. At times while listening to lessons my mind wandered. This<sup>2</sup> did not affect my studies.

In the last examination in November 1967, I passed with Grade I Certificate. I am also chess champion in my school, also draughts champion in 1967. In August 1967, I passed examination to enter Form VI.

10

The present Headmaster came on 1.1.68.

The previous Headmaster took no action at all.

I withdrew the summons against the Headmaster on advice. It was not a good idea to study in a school under the same Headmaster at the same time going ahead with the summons.

20

No. 12

Nadchatiram  
s/o Muttu-  
cumaru  
Examination  
19th August  
1969.

No. 12

P.W.2. NADCHATIRAM s/o MUTTUCUMARU: a/s in English:-

The plaintiff is my son, a pupil at K.G.V. Seremban, since 1957. He was expelled from school on 6th May, 1968. I received Ex. P2 and P3. I was never informed by Headmaster that he contemplated expelling him. The Headmaster did not bring any incident to my notice that constituted breach of discipline, nor the previous Headmaster.

I always notice the school report. His conduct was good. I have not had occasion to believe that he misconducted himself either in school or outside.

30

When I received P2 and P3, I appealed against the decision. I produce two copies of letters I wrote - marked P4 (7.5.68), P5 (8.5.68).

I was not notified of the reasons of his expulsion. I wrote on 8.5.68 asking for reasons - produced and marked P6.

In the High Court in Malaya

The Chairman on 10.5.68 sent me a letter stating that arrangement was being made to consider the appeal. I was also informed and I was also a member of the Board of Governors. The appeal was heard on 29.5.68. I attended the meeting. I did take part. In fact, most of the members questioned me about my son, about his conduct. They asked me whether I was prepared to admit my son in any other school. I inquired the offence for which my son was expelled. I told them that you asked me to appeal but I did not know the offence. I was not told the offence. I was not given access to the papers at that meeting. After that I left the meeting.

Plaintiff's Evidence

No. 12

Nadchatiram  
s/o Muttu-  
cumaru  
Examination  
19th August  
1969

(continued)

On 29th May before going to the meeting, I wrote an appeal letter - produced and marked P7. On p.4 of P7 I did say that "You want Mahadevan and his father to appeal. How do you expect them to appeal."

I first came to know of the incidents a few days before application for re-instatement.

In 1962 the Cambridge result was only 35% pass. So at the Board meeting I brought in a resolution that the Headmaster of K.G.V. should be allowed to remain in the school for 3 years. In 1962 the school had four headmasters. The Ministry agreed with our proposal and when the present Headmaster's predecessor was transferred the Board decided that three of us, including me, should go and see the Ministry so that the Headmaster should not be transferred. We were not successful. I believe the present Headmaster thought that we were preventing him from coming to the school. Also at the Board meeting the present Headmaster wanted contributions for the cadet corps and the Board of Governors should help. I offered \$250/- and when my son gave it to the Headmaster he was not satisfied with the amount I gave.

On 3.5.68 there was a meeting of the Board of Governors. One of the items on the agenda was expulsion of a pupil - refers p.43 of Pl. I left the meeting under protest. I had no access to the letters before or after the expulsion.

I was informed of the decision of the Board on

In the High Court in Malaya

Plaintiff's Evidence

No. 12

Nadchatiram s/o Muttucumaru Examination 19th August 1969

(continued)

1.6.68 - produced and marked P8.

I could not put up a case as I was not informed of the grounds of expulsion.

I was told by my son about the incident at the Headmaster's office on 2.4.68. I told my son to take the necessary action. My son made a police report.

On 29.5.68 I also forwarded a petition of appeal - produced and marked P9. The appeal was made by me as the guardian under L.N. 61/5.3.59 - Rule 10.

10

By reason of expulsion my son was not able to sit for first part of H.S.C. last year. He was also not in a position to apply for a Colombo Plan Scholarship as he was an expelled student. He is also unable to register in any university as he is an expelled student.

The expulsion has an effect. He was looked down by other students.

Cross-examination

XXN

20

Refers to P3. There were remarks on conduct of my son. This could not be the grounds of his expulsion. If the remarks on conduct was a ground for expulsion it was not a sufficient ground.

I have not been told of any misbehaviour on the part of my son.

The Board allowed me to say what I wanted to say at the Board meeting when considering the appeal.

I was allowed at the Board meeting as a parent, as an appellant. I did not request the Board to have my case first. It is true that I was not feeling well and I asked to be excused. - produced minute dated 10.6.68, marked D10.

30

I was not given to prove my grievance. I did not know what transpired at the Board meeting on 3.5.68 since I was asked to go out.

RE-EXAM:

The petition only sets out what I knew at that time. It did not include matters not disclosed at that time.

Counsel agree that affidavit of Norliah bte. Haji Ahmad be marked as an exhibit. (Marked P11).

Case for Plaintiff closed.

Adjourned to 9.00 a.m. on 20.8.69.

Sd: Abdul Hamid

In the High  
Court in  
Malaya

Plaintiff's  
Evidence

No. 12

Nadchatiram  
s/o Muttu-  
cumaru, Re-  
Examination  
19th August  
1969

(continued)

10

No. 13

ANANDARAJAN s/o KRISHNAN

D.W.1. ANANDARAJAN s/o KRISHNAN: a/s in English:-

Headmaster, K.G.V. School, Seremban.

I became Headmaster since 1.1.68, the first time I became Headmaster. I was in the Ministry of Education as head of planning division. Before that I taught at Victoria Institution and Deputy C.E.O., Johore Bharu.

20

I know plaintiff, a student in school, Lower Sixth, Science. In May last year I expelled him. I decided to expel him after the talentime show on 2.4.68. The talentime show was on 1.4.68. I have power to expel - Education (School Discipline) Regulations, 1959, - (L.N. 61/59), under Regulation 8(a).

I was satisfied that it was necessary and desirable to expel the plaintiff for the purpose of maintaining discipline in the school.

30

The cumulative effect of the boy's behaviour in the school during my tenure of office as well as my predecessor's. There were reports from senior teachers and records of disciplinary action in which he was caned.

Defendant's  
Evidence

No. 13

Anandarajan  
s/o Kirshnan  
Examination  
20th August  
1969.



In the High  
Court in  
Malaya

Defendant's  
Evidence

No. 13

Anandarajan  
s/p Krishnan  
Examination  
20th August  
1969

(continued)

The teacher in charge of the talentime show who was also the form teacher of the plaintiff reported to me of the behaviour of the said pupil and a group of others who brought disrepute to the school by their behaviour and conduct at the show. The Head Prefect as well as the Chairman of the Interact Club and the Form Teacher informed me that plaintiff flicked matches during the show, indulged in hooliganism with his group and was interrupting the show by frequently leaving his seat while the show was on. This report was submitted by the Head Prefect, Chairman Interact Club and Form Teacher.

10

I called the plaintiff as well the other boys to my office on 2.4.68. I questioned them on their behaviour based on the report submitted to me. I was convinced, after questioning, that the behaviour of the plaintiff as stated in the report was true.

I told them that they had been guilty of various actions as reported to me. I also told them of an incident two nights before at the school hall, at a film show, in which two boys quarrelled and threw a knife at another boy. I told them that if they carry on behaving like thugs and at the rate they were going, they would also find themselves stabbed. I then dismissed them. After that I called one by one. I called the plaintiff in and questioned him further and also informed him of his misbehaviour in the school during my tenure of office and his misbehaviour on other occasions. He denied some charges and admitted to a few. I then told him that I would take action and sent him to the library.

20

30

The plaintiff for instance admitted occupying a \$3/- seat after buying a \$2/- ticket. He also admitted leaving the show a number of times causing interruption. He admitted laughing with the group but denied that he shouted filthy words and flicked matches.

40

During the course of my questioning he also said that I would be charged with defamation of character, at the same time he displayed blatant defiance of authority.

I informed the plaintiff of his misbehaviour

with the Prefects' Board and plaintiff admitted. I also brought to his notice his attitude towards the Prefect and he had nothing to say about it. Plaintiff just kept quiet. I also told him that when it suits him he brought a medical certificate in order to be absent from afternoon games, and yet he was found playing games other than that he was supposed to play. It was not only really a medical certificate but a letter from the father saying he was ill. I told him that he was running away from school activities. He admitted but said that the pain does not hurt him if he plays badminton. I also told him that as a pupil his primary task was to develop wholesome habits in the academic and extra-curricular fields, and reports of his academic progress from his teachers were far from satisfactory. He denied it. I meant not up to the mark when I said far from satisfactory. I showed him certain remarks - remarks written by teachers in his own books which I initialled myself. The remarks were that he was far from satisfactory and a bad influence in the class.

I told the plaintiff that I also informed his father and Datin Seenivasagam about his conduct. Plaintiff just kept quiet.

I took into consideration all these before I came to my decision. Before I came to my decision I both discussed and explored my convictions. By that time a number of reports were made against the plaintiff. The general opinion was that it was in the best interest of the school that the boy should be expelled. It was my opinion based on the report. The tone of the school was being affected by his behaviour. I mean the morale, discipline and the attitude of the students generally, at the same time the morale and the confidence of the teachers. In order to maintain good tone, I decided to expel him.

It would be difficult to maintain the discipline of the school if the plaintiff were retained.

The plaintiff blatantly defied authority of his teachers, prefects and myself, and this is almost like a disease, and if one pupil could get away with it, it would undermine the discipline of the whole school.

I had inquiries, meetings with the teachers to countercheck my convictions.

In the High  
Court in  
Malaya

Defendant's  
Evidence

No. 13

Anandarajan  
s/o Krishnan  
Examination  
20th August  
1969

(continued)

In the High  
Court in  
Malaya

Defendant's  
Evidence

No. 13

Anandarajan  
s/o Krishnan  
Examination  
20th August  
1969

(continued)

I decided to expel him just before my departure for Johore Bahru, that is, two days before school closed, which was approximately on 14th April. Before I left for Johore Bahru, I left instructions to issue notice to Board of Governors for a meeting just before school reopened. The purpose was to inform the Board that I was going to expel the plaintiff.

I announced on 6.5.68 that one student was being expelled and on that day I called him to my office. I told him that he was being expelled from school and that his leaving certificate would be sent to his father. 10

It is not true that I told plaintiff to take his books and get out.

P3 is the leaving certificate I sent to the plaintiff's father. P2 was the covering letter. I stated that appeal could be made within a month.

The plaintiff's father did appeal to the Board. I was the secretary. He filed a petition of appeal - P9 identified as the petition filed. 20

The Board met on 27.5.68 and again on 29.5.68. When the appeal was heard the plaintiff's father was present both as a member of the Board as well as a parent. The plaintiff's father presented his case. After that plaintiff's father asked permission to leave as he was not feeling well. I was also asked to present the case. I produced documents as well as answered questions put by members. I produced reports made to me by teachers which were reduced to writing for purposes of the appeal. These were the letters on pages 23 and 24 of P1, p.25 from the Form Teacher, p.26 by Hilary S. Ong, p.27 by science teacher, p.28 by school captain and p.29 by Interact Club. All these reports were tendered before the Board. 30

Ten members of the Board were present including the plaintiff's father - one absent.

I produce the minutes of the meeting - Ex. P.10 minutes dated 10.6.68. 40

The Chairman of the Board is Dato Abdul Jalil, representing the 3rd Defendant.

The decision of the Board was conveyed to the appellant. At the time of the decision, the plaintiff's father was not there.

I did not expel the plaintiff because of the report.

It is not true that I unlawfully and without valid reason expelled the plaintiff.

In the High  
Court in  
Malaya

Defendant's  
Evidence

No. 13

Anandarajan  
s/o Krishnan  
Examination  
20th August  
1969

(continued)

XXN:

Cross-  
examination

10 I knew the plaintiff about four months before the date of expulsion. I knew him to judge his character for about 3 months. During those 3 months the plaintiff's greatest act of misconduct was his misbehaviour. The report was verbally done. Subsequently, I asked these persons who reported to reduce them to writing.

20 My observation of the pupil was that his attitude was wrong when he talked to me, his attitude towards the Prefects' Board and his attitude and behaviour towards the teachers. I was not present to see his misbehaviour to the teachers except his behaviour towards me.

On 2.4.68 I called up three boys at the beginning. After that I called one by one - cannot remember who I called first. I called Vijayapal last.

30 The purpose of calling these boys was to investigate the validity of the report and the course of action I should take. I did suspend one or two boys on 2.4.68. At the first instance the interview did not take more than ten minutes. I started between 7.40 and 8.10 a.m. It took almost the whole day investigating the incident. At this time the plaintiff was at one stage in the library. I recorded it as I was investigating.

I agree that the purpose of calling these boys on 2.4.68 was to investigate the incident at the talentime show. In so far as the plaintiff was concerned, I gave him the history of his misbehaviour.

In the High  
Court in  
Malaya

Defendant's  
Evidence

No. 13

Anandarajan  
s/o Krishnan  
Cross-  
examination  
20th August  
1969

(continued)

Counsel refers to p.18 of P1, paragraph 7. I disagree that most of the reports were received after 2.4.68. It is correct that the decision to expel was taken on 10.4.68. I did receive some of the reports between 2.4.68 and 10.4.68. I cannot remember the reports I received between 2.4.68 and 10.4.68.

There were reports after the 2nd April while I was investigating, for example, leaving school without permission and breach of traffic offence. 10

I have 1,500 pupils in school. The senior assistant headmaster would tell me about the conduct of the pupils who misbehave. He spoke from record and memory. I have not produced original record about the plaintiff's misconduct.

I told the plaintiff that probably I would expel him and take action.

I did not tell the plaintiff that "these are the charges, and unless you have a satisfactory explanation I am going to expel you." I did say to the plaintiff that I will probably expel or take action - something to that effect. 20

The plaintiff had all reasons to believe that I was going to expel him because I had already mentioned of his behaviour to members of his family, and I warned the boys that I would not tolerate his behaviour on previous occasions.

The plaintiff was given a chance to answer every time the case came up. So was it on 2.4.68. 30

I cannot say whether he has been sent to detention for misconduct. I have to check.

One of the charges was that the plaintiff flicked matches at the talentime show. Both teacher in charge, Mr. Dressen, and the Head Prefect informed me. I investigated and was satisfied that the plaintiff flicked matches.

Refers p.29 of P1 - These were some of the other charges against the plaintiff.

I used the word 'hooligan' based on acts of 40

behaviour which are not normally expected from school boys.

The report by the school captain - p.28 of P1 - indicates that the plaintiff misbehaved.

The report about the incident of the knife being thrown was not handed to my counsel.

10 The plaintiff's blatant defiance of authority and respect is shown by the plaintiff telling me that I can be sued for defamation of character. On another occasion when the Head Prefect asked him to pick up paper he said 'I am not a labourer's son' and he refused to do it and had to be sent to me. The Prefects' Board approved punishment. I told plaintiff that he should do it and he did it. His sister came to see me. The sister agreed about the punishment. She did not object.

20 I cannot remember the game plaintiff was supposed to play when he produced letter from his father. He was found playing badminton in the school hall. It was possible that if he played a game on the field he would be subjected to more strenuous action.

I expelled the plaintiff based on the cumulative effect of his behaviour - reports relating to incident he was found with a girl in a classroom.

30 As regards the first incident, he was found with a girl in a classroom with the door closed. The second time he was found again. This was done in defiance of what he was told not to do, that is, not to be found in a closed room with a girl. It was during my predecessor's time. This happened sometime in November 1967.

Refers p.23 of P1 - 2nd incident - last three lines (per ruling of headmaster). I did not take any action on this before 2.4.68.

Refers p.23 - first paragraph - childish pranks referred to were that the plaintiff used to rap the pencil on the desk disrupting the class.

40 Plaintiff was caned once by another headmaster. I cannot remember whether I have caned the plaintiff. I dealt with him so many times. All I can remember is that his behaviour was such as to disrupt the school.

In the High  
Court in  
Malaya

Defendant's  
Evidence

No. 13

Anandarajan  
s/o Krishnan  
Cross-  
examination  
20th August  
1969

(continued)

In the High  
Court in  
Malaya

Defendant's  
Evidence

No. 13

Anandarajan  
s/o Krishnan  
Cross-  
examination  
20th August  
1969

(continued)

There were two or three confrontations with the Prefects' Board. One was when there was a breach of discipline and he was asked to see the Assistant Headmaster and when the Assistant Headmaster told the plaintiff he was wrong the plaintiff argued and the plaintiff was told to get lost.

Refers p.24 - last paragraph. I investigated and found that there were about five complaints, e.g., failure to do homework, his attitude in class, and on another occasion he had an argument with teachers.

10

The report on pages 23 and 24 relates to what Mr. Ung told me before 2.4.68.

I did not ask the plaintiff about being found with the girl on 2.4.68. I did recall to plaintiff about the incident with the Prefects' Board.

I told plaintiff about the behaviour and conduct at the talentime show. I saw Kenneth Dressen on 2.4.68.

20

Counsel refers p.26 of Pl. I brought to plaintiff's notice about his behaviour in the science laboratory.

Counsel refers p. 27 of Pl. I did bring to plaintiff's notice a few of the things in this report.

Counsel refers p. 28 of Pl. I did tell plaintiff on 2.4.68. about his behaviour towards the prefects.

30

Refers to p. 43 paragraph 4. There was necessity to keep confidential reports by teachers. In my opinion they were privileged and the teachers acted in good faith. I felt that they would be harrassed by the plaintiff's family if reports were made available. The identity of some of the persons who made the reports were made known to the plaintiff.

The plaintiff was given warning to expel though not notice to expel. I spoke to plaintiff's

40

father at Board meeting, not at any other time. There was no hard feeling between plaintiff's father and myself. I did ring up the plaintiff's father and told him about plaintiff's behaviour. He told me he would come and see me but he never came. I told him about behaviour at the talentime show. I did not tell plaintiff's father before that unless he came to see me I would expel the plaintiff.

10 Refers to p. 7 of Pl.

Medical report - p. 12 of Pl. I do not agree that the plaintiff developed what was said in the report as a result of my treatment.

Refers p. 20 of Pl. My reply was in paragraph 11.

Refers p. 4 of P7. I remember reading that last paragraph under (vii).

20 Under the Regulations, it was not necessary to respond to this. When Board was deliberating I was asked to leave. The school holidays were on and I did not notify about the expulsion earlier. Although I decided to expel I waited until everything was reduced to writing. Mentally I expelled the plaintiff on 10.4.68. The effective date of the expulsion was as stated in the leaving certificate.

Later in April, when I came back from a course, I learnt about the police report. It was sent to me but I was in Johore Bahru. I was annoyed about the report but that did not affect my decision.

30 I deny that I made up my mind to expel the plaintiff after I received the police report.

There was an inquiry about girls being caned in school. This was made by the plaintiff's brother.

I did say at the interlocutory application that one of the main reasons for the expulsion was the plaintiff having been found with a girl in a classroom.

Counsel refers to P. 9 - page 3, paragraph 8, and shows a circular from the Education Department. This procedure was only circulated in the State of

In the High  
Court in  
Malaya

Defendant's  
Evidence

No. 13

Anandarajan  
s/o Krishnan  
Cross-  
examination  
20th August  
1969

(continued)



In the High  
Court in  
Malaya

Defendant's  
Evidence

No. 13

Anandarajan  
s/o Krishnan  
Cross-  
examination  
20th August  
1969

(continued)

Re-  
examination

Selangor. I did not in this case give any  
warning in writing.

RE-EXAM:

I came to know of the police report after  
I came back from Johore Bahru.

The official decision to expel was when I  
issued the leaving certificate.

Refers P. 18 of Pl. I decided that the  
plaintiff should be expelled on 10th April -  
even earlier on 2.4.68. I executed that  
decision after I came back from Johore Bahru.

10

My affidavit was in reply to the plaintiff's  
father's affidavit.

I recorded subsequently what transpired  
between me and the plaintiff. I did not record  
it there and then.

Sd: Abdul Hamid.

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No. 14

DATO ABDUL JALIL B. HAJI AMINUDDIND.W.2. Dato Abdul Jalil b. Haji Aminuddin  
a/s in English :-

2nd Mile, Seremban-Kuala Pilah Road.

I was Chairman of Board of Governors, K.G.V. School, for over 10 years. When my term expired on 31.12.68 I declined to accept a further term.

10 I was Chairman of the Board to consider appeal from the plaintiff's father. A Board meeting was first held to consider the procedure for hearing the appeal. This meeting was held on 20.5.68 - marked minute on D.12 - minute dated 21.5.68.

The Board decided on 27.5.68 as to procedure to be adopted - Ex. D.10.

20 The Secretary was to convene the meeting. The Board met on the same date. The meeting was adjourned to 29th May for members to read the petition handed by the plaintiff's father (P.W.2). P.W.2 was asked to come on the 29th. He participated in the first instance. P.W.2 then requested that he should be heard first. It was granted. The Board then heard him. He spoke for about half an hour or more and then he answered questions from members. At the end of it he asked permission to leave the meeting. He stated that he was not feeling well. Then the Board called the 1st Defendant. He spoke, 30 answered questions and asked to leave the room. The Board considered the appeal in his absence. The Board sat until midnight. The Board confirmed the decision of the Headmaster.

XXN:

There were several letters from the plaintiff's father. (Shown Ex. P7). I do not remember having seen this when the Board sat to consider the appeal.

40 P7 was dated 29th. I do not know whether

In the High  
Court in  
MalayaDefendant's  
Evidence

No. 14

Dato Abdul  
Jalil b.Haji  
Aminuddin  
Examination  
20th August  
1969Cross-  
examination

In the High Court in Malaya

Defendant's Evidence

No. 14

Dato Abdul Jalil b.Haji Aminuddin

Cross-examination 20th August 1969

(continued)

Re-examination

I received it on that day or some other day. I do not remember having seen this.

After P.W.2 withdrew from the meeting D.W.1 was called.

I cannot remember whether P.W.2 asked about the charges. To the best of my knowledge each member of the Board was given to read the reports from the teachers.

P.W.2 spoke mostly about what appeared in P. 9. I cannot remember a lot of things - what P.W.2 was shouting.

10

There was nothing laid in the Constitution (instrument of Government of K.G.V. School) that the Headmaster should inform the Board as to the conduct of the pupils.

RE-EXAM:

There were two members of the Bar on the Board.

Defendants' case closed.

No. 15

No. 15

20

Defence Submission 20th August 1969

DEFENCE SUBMISSION

Refers prayer (a) in Statement of Claim and other paragraphs in Statement of Claim.

Refers to P.W.1's evidence. Did not state that 1st Defendant acted maliciously and without any valid reason.

In cross-examination admitted certain reasons for his expulsion. Admitted certain incidents in the report.

On question of malice - reference is made to Woodroffe, 10th edn., 3rd vol., p. 285. "Malice" has to be proved by conduct or behaviour of the party.

30

As to validity of reasons, for the Court to decide.

Whether lawful, it is for the Court to decide.

No evidence of unlawful action on the part of the Headmaster.

Violation against the rules of natural justice - alleges that no charges were levelled against the plaintiff.

In the High  
Court in  
Malaya

            
No. 15

Defence  
Submission  
20th August  
1969

(continued)

10 Power to expel - Regulations L.N.61/59  
Rule 8.

If the Headmaster is satisfied then he can expel. There need not be any specific charge for misconduct, i.e. no specific charge need be levelled.

Cites Halsbury's 3rd edn., vol. 13 p.590 para 1241.

Rule of natural justice need not be applied strictly. Refers to (1956) W.L.R. Vol. 1 p.840.

20 Refers (1960) W.L.R. vol. 1 p.223 -  
University of Ceylon v. Fernando. In this case there was a specific breach. In the instant case, no specific provision is made. This is a discretion given to the Headmaster.

Headmaster warned plaintiff that he might be expelled on 2.4.68. Submit that what Headmaster did was sufficient to comply with rules of natural justice.

30 Headmaster informed the plaintiff's father of his son's expulsion. The Board of Governors hearing the appeal gave opportunity to plaintiff's father speak.

Ask that action be dismissed.

Question of damages - no proof of damages.

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PLAINTIFF SUBMISSION

In the High  
Court in  
Malaya

No. 16

Plaintiff  
Submission  
20th August  
1969

Refers to argument by En. Abdullah as to Regulation 8 - on power of Headmaster to expel after satisfaction without any specific charge.

Question is violation of natural justice.

The interview on 2.4.68 - primary purpose to inquire into the incident at talentime show.

No ring of truth in evidence of D.W.1 that he informed plaintiff of other incidents. Did not inform plaintiff he was considering expulsion. Did not make plaintiff realise that he was in a position to be expelled. 10

Submits necessary to call upon plaintiff to show cause why he should not be expelled. Complete failure of natural justice.

Concedes that no malice was strenuously pursued but there was evidence to suggest malice. I refer to police report. Expulsion may have been prompted by malice. 20

Defendant conceded that incident relating to the girl was one of main reasons for expulsion. He did not put the allegation of that incident to the plaintiff.

Submits unusual that none of what D.W.1 said that he informed plaintiff was put to plaintiff in cross-examination.

D.W.1 states in evidence that there were written records available. Why were they not produced. 30

What happened on 2.4.68 sufficient compliance with natural justice.

Refers to passage in Halsbury's cited by En. Abdullah. I cite A.I.R. (1959) Orissa p. 200 where passage is cited. (p.200 2nd column). Refers 1st column - p. 199.

D.W.1 in affidavit stated that on 10.4.68 he made the decision. In Court he said the official expulsion was on 4.5.68.

In the High  
Court in  
Malaya

On question of natural justice on p. 199, same case, paragraph (8) - refers p. 200 - para (11).

No. 16

Plaintiff  
Submission  
20th August  
1969

Refers p. 201 - 1st column "So long as ..."

(continued)

10 Cites case on opportunity given must be real and effective to meet allegations - (1945) 2 A.E.R. 131, at P. 137, 138(G).

Cites (1958) A.I.R. Allahabad p. 792 - 2nd column - no opportunity if material against him not disclosed.

Cites (1943) 2 A.E.R. p. 337 "E".  
Language of Loreburn L.C. in Board of Education v. Rice.

Refers to A.I.R. (1955) Patna, p. 372 at p. 373, paragraph (4) - "The next submission etc.....".

20 (1960) 1 A.E.R. p. 631 - University of Ceylon v. Fernando.

There was similarity of language with our rule - question of being satisfied.

At p. 637 - "E". There are varying degrees of the application of the rules of natural justice.

On question of appeal - complete absence of rules of natural justice - no opportunity to appeal.

30 As regards prayer on damages. Proved that boy by result of expulsion unable to take examination. Some evidence of social reaction. Ask for damages.

Reserve judgment.

To a date to be fixed.

Sd. Abdul Hamid.

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In the High  
Court in  
Malaya

No. 17

JUDGMENT OF ABDUL HAMID, J.

No. 17

IN THE HIGH COURT IN MALAYA AT SEREMBAN

Judgment of  
Abdul Hamid, J.  
5th September  
1969.

CIVIL SUIT NO. 101 OF 1968.

Between

N.Mahadevan (an infant)  
suing by his father and  
next friend M.Nadchatiram Plaintiff

And

1. K. Anandarajan (Headmaster) 10  
King George V. School,  
Seremban.
2. The Minister for Education,  
Malaysia.
3. Board of Governors,  
King George V School,  
Seremban. Defendants

JUDGMENT

The Plaintiff's claim is :-

- (a) for a declaration that the order of 20  
expulsion of the Plaintiff as a pupil  
from the King George V School, Seremban,  
made by the 1st 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, is  
null and void and of no effect;
- (b) for an order that the Plaintiff be 30  
reinstated as a pupil of the King George  
V School, Seremban, forthwith;
- (c) damages and costs.

The 1st Defendant is alleged to have  
unlawfully, maliciously and without any valid  
reasons expelled the Plaintiff from the  
school and that the action taken by the

1st Defendant was in violation of the rules of natural justice.

The facts leading to the expulsion of the Plaintiff are conflicting. The following is a brief summary. The Plaintiff in his evidence stated that on 6th May, 1968, the 1st Defendant (D.W.1) announced in the school hall that a pupil was to be expelled. Later that day he was informed by D.W.1 in his office that he had been expelled and was told to go home. A leaving certificate was subsequently sent to his father. No indication, he said, was given either to him or to his father that he was to be expelled, and neither was he asked to explain before the order of expulsion was issued. His father appealed against D.W.1's decision to the Board of Governors. The Board considered the appeal and confirmed D.W.1's decision.

D.W.1 stated in his evidence that he decided to expel the Plaintiff after the talentime show which was held on the 1st day of April, 1968. He received a report of the Plaintiff's misconduct at the talentime show from the teacher in charge of the show. Reports on the behaviour of the Plaintiff at that show were also made by the Head Prefect and the Chairman of the Interact Club. The report contained allegations that the Plaintiff flicked matches and indulged in hooliganism with his group. He called the Plaintiff with two other boys to his office on 2nd April, 1968, questioned them on their behaviour and also told them that if they were to carry on behaving like thugs, they would soon find themselves stabbed. He also questioned the Plaintiff alone on that day. He informed the Plaintiff of his misconduct on other occasions. The Plaintiff denied the accusations. He however admitted to some of the incidents that happened, for example, occupying a \$3/- seat after paying for a \$2/- seat and leaving the hall a few times during the show. He admitted laughing but denied shouting filthy words and flicking matches. D.W.1 added that during the course of the interview, the Plaintiff asserted that he (D.W.1) could be charged for defamation of character. The Plaintiff, he said, displayed

In the High  
Court in  
Malaya

No. 17

Judgment of  
Abdul Hamid, J.  
5th September  
1969

(continued)



In the High  
Court in  
Malaya

No. 17

Judgment of  
Abdul Hamid, J.  
5th September  
1969

(continued)

blatant defiance of authority. He then informed the Plaintiff of his misbehaviour towards the Prefect Board. On another occasion the Plaintiff brought a letter from his father saying that he was ill and yet he was found later that day playing badminton. The Plaintiff admitted when confronted that he was running away from school activities but argued that the pain did not hurt him if he played badminton. D.W.1 also told the Court of certain remarks made by the Plaintiff's teachers in the Plaintiff's exercise book to the effect that the Plaintiff was far from satisfactory and that he was a bad influence in the class. D.W.1 maintained that he took all these into consideration before making his decision. He also caused further investigation into the incidents of the Plaintiff's misconduct before he formed the opinion that the tone of the school was being affected by the Plaintiff's behaviour. He emphasised that the morale, discipline and attitude of students generally, at the same time the morale and confidence of the teachers were being affected. 10

D.W.1 said that he decided to expel the Plaintiff just before his departure to Johore Bahru to attend a course some time on the 14th of April, 1968. 20

In cross-examination D.W.1 said that he had opportunity to judge the Plaintiff's character for three months. Answering the question put by the Plaintiff's counsel as to the purpose of calling the Plaintiff and two other boys to his office on 2nd April, 1968, he said that it was to investigate the validity of the report and to decide the course of action to take. On being questioned further he agreed with the Plaintiff's counsel that the purpose of calling the Plaintiff and two other boys was to investigate the incident at the talentime show. However, he said that in so far as the Plaintiff was concerned, he informed him of the history of his misbehaviour. He disagreed with the Plaintiff's counsel's suggestion that most of the reports were received after 2nd April, 1968, though he 30 40

admitted that some of the reports were made between 2nd April and 10th April, 1968. D.W.1 also said that he warned the Plaintiff that probably he would expel him or take some action or something to that effect.

In the High  
Court in  
Malaya

No. 17

Judgment of  
Abdul Hamid, J.  
5th September  
1969

(continued)

10 The Plaintiff in cross-examination admitted that D.W.1 called him and two other boys to his office. He alleged that D.W.1 scolded them about the incident at the  
talentime show and shouted at them at the top  
of his voice. As a result, he broke down and  
started crying. He asked for permission to  
leave the school as he was not feeling well but  
was refused. D.W.1 called him again to the  
office, this time alone, and asked him to swear on  
the life of his (Plaintiff's) mother that he did  
not misbehave himself at the talentime show and  
he swore. He again asked for permission to  
go home but was refused. The Plaintiff  
20 reported this incident with the head teacher  
to the Chief Education Officer but no action  
was taken. He later lodged a police report  
as a result of which a summons was issued to  
D.W.1 for assault. The case was however  
withdrawn because, according to the Plaintiff,  
he wanted to establish good relationship with  
his teachers and head teacher. The Plaintiff  
denied most of the allegations of misconduct.  
He however admitted, for example, making  
30 funny faces at the Head Prefect, but added that  
they were not rude faces.

40 I shall now examine the provisions of law  
under which the 1st Defendant acted when he  
decided to expel the Plaintiff. Under  
Regulation 4 of the Education (School  
Discipline) Regulations 1959 (L.N.61/1959), the  
head teacher is responsible to the Board of  
Governors for the discipline of the school and  
has authority over the pupils. Regulation 8  
of the said Regulations provides 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".

In the High  
Court in  
Malaya

No. 17

Judgment of  
Abdul Hamid, J.  
5th September  
1969

(continued)

Under Regulation 10 a pupil or his parent may appeal against a decision of the head teacher under Regulation 8.

Regulation 8 seems to me to require that the head teacher must first be satisfied that the Plaintiff's expulsion is necessary or desirable for the purpose of maintaining discipline or order in the school before he issued the order. It also implies that the head teacher is required to make a decision before issuing the order. Before taking such a decision there must be some process whereby the head teacher can satisfy himself of the pupil's misconduct justifying expulsion. I shall deal with this later in my judgment.

10

Before proceeding further, the Court proposes to consider whether such decision may judicially be reviewed. De Smith in his book *Judicial Review of Administrative Action*, 1st Edition, at pages 61/62 said :-

20

"In considering the scope of judicial review, a further broad distinction must be drawn between ministerial, legislative, and executive or administrative powers, on the one hand, and judicial powers, on the other. The validity of the exercise of ministerial, administrative and legislative powers affecting the legal interests of individuals is always open to challenge in the courts, unless judicial review has been excluded, directly or indirectly, by the relevant legislation. If the exercise of the power is predicated on findings of law or fact, the correctness of those findings may be impugned directly or in any appropriate form of collateral proceedings - e.g., by resisting an action or prosecution for enforcement of the order, by bringing an action for a declaration that the order is null and void, or by suing the actor for a civil wrong."

30

40

In the instant case, the function of the head teacher cannot, in my opinion, be regarded as purely administrative or

judicial. Apparently, there are no clear authorities to indicate when an administrative body can be said to be acting judicially or exercising a quasi-judicial function. The reflection gathered from authoritative pronouncements delivered by English Courts is that one must rely mainly on inferences drawn from the manner in which the Courts have acted in particular cases.

In the High  
Court in  
Malaya  

---

No. 17  
Judgment of  
Abdul Hamid, J.  
5th September  
1969

10        In Ramesh Chandra Sahu v. N. Padhy,  
Principal, Khallikete College, Berhampur,  
A.I.R. (1959) Orissa 196, R.L. Narasimham  
C.J., in his judgment on a petition by an  
ex-student of the college challenging the  
validity of an order passed by the Principal  
of that college expelling the Petitioner, said  
at page 203 (para. 25) :-

(continued)

20        "It is indeed very difficult to decide  
whether a particular order is quasi-  
judicial or administrative. Several  
tests have been laid down and these  
have been reiterated in a very  
recent decision of the Supreme Court  
reported in Radesham Khare vs. State  
of Madhya Pradeah, 1959 SCJ.6 (A.I.R.  
1959 SC.107)."

30        His Lordship referred to an undertaking  
contained in Article 107 of the Education  
Code which at the time of admission every  
student in the college, if he is a major,  
or his parents, if he is a minor, is  
required to give. It reads :-

"I undertake to see that my son/  
daughter/ward abides by the rules  
of the College and the hostel attached  
to it. I also undertake to with-  
draw him/her from the College and/  
or hostel should the Principal decide  
that such withdrawal is necessary  
in the interest of the institution".

40        His Lordship held "that the use of the word  
"decide" in Article 107 of the Education  
Code was very significant. There must be  
first a decision by the Principal that the  
withdrawal of the boy from the College was  
necessary and it was only after coming to

In the High  
Court in  
Malaya

No. 17

Judgment of  
Abdul Hamid, J.  
5th September  
1969

(continued)

such a decision that he should take further steps. A "decision" necessarily involves hearing all parties concerned. The language of Article 107 of the Orissa Education Code supported the view that it was a quasi-judicial order."

In the instant case although under Regulation 8 of the Education (School Discipline) Regulations 1959, the word "decide" is not used, the effect of the language used seems to me to support the view that the order of the head teacher is a quasi-judicial order. The element of "decision" which I think is a necessary ingredient when exercising a judicial function may be implied from the language used. Furthermore, the fact that the Regulations also make provision for an appeal against the "decision" of the head teacher (Regulation 10) tends to strengthen my view that it is a quasi-judicial order.

10

20

In University of Ceylon v. Fernando (1960) 1 A.E.R. 631, the judgment of the Privy Council was pronounced on the basis that the decision of the Vice-Chancellor of the University of Ceylon under clause 8 of the General Act of the University of Ceylon, No.1, Chapter VIII, Part 1, was quasi-judicial. Clause 8 prescribes :-

"Where the vice-chancellor is satisfied that any candidate for an examination has acquired knowledge of the nature or substance of any question or the content of any paper before the date and time of the examination, or has attempted or conspired to obtain such knowledge, the vice-chancellor may suspend the candidate from the examination or remove his name from any pass list, and shall report the matter to the Board of Residence and Discipline for such further action as the board may decide to take."

30

40

The principle in Fernando's case was applied in Hoggard v. Worsbrough Urban District Council (1962) 1 A.E.R. 468, and at page 471 Winn J. said :-

"In my view, University of Ceylon v. Fernando provides a very helpful glossary and collection of references to the cases in which the court has defined the duty resting on persons whose decision is a quasi-judicial decision."

In the High  
Court in  
Malaya

No. 17

Judgment of  
Abdul Hamid, J.  
5th September  
1969

(continued)

10 In paragraph 3 of the Statement of  
Claim the Plaintiff alleges that the 1st  
Defendant unlawfully, maliciously and with-  
out any valid reason expelled the Plaintiff  
from the said school, and in paragraph 9  
a somewhat similar allegation is made.  
There appears to be no significant distinc-  
tion between these two allegations. In the  
light of this allegation, it is not perhaps  
inappropriate at this juncture to examine  
the facts to discover whether the head  
teacher had valid reasons to act under  
20 Regulation 8.

It is clear from the evidence of D.W.1  
that he decided to expel the Plaintiff after  
the talentime show on 2nd April, 1968, being  
satisfied that it was necessary to expel the  
Plaintiff for the purpose of maintaining  
discipline in the school.

30 I am satisfied that on 2nd April, 1968,  
D.W.1 had sufficient evidence relating to  
instances of the Plaintiff's misconduct in  
his possession to justify him to commence  
proceedings to expel the Plaintiff. I have  
carefully considered the evidence given by  
the Plaintiff and head teacher and I form  
the impression that the Plaintiff was not  
telling the truth to this Court when he  
denied the allegations. On the other hand,  
I accept the evidence given by D.W.1 I have  
not the slightest doubt that the allegations  
of the Plaintiff's misconduct are well-  
40 founded. It is apparent from the evidence  
that the Plaintiff is an intelligent pupil  
but it is most unfortunate that his conduct  
has not matched his mental qualities. The  
reports received by D.W.1 irresistibly  
show that the Plaintiff was not only  
irresponsible, arrogant, spoilt and conceited,  
but also inconsiderate and had no respect for  
authority.

In the High  
Court in  
Malaya

No. 17

Judgment of  
Abdul Hamid, J.  
5th September  
1969

(continued)

D.W.1 is invested with the legal powers to expel and, in my opinion, except for the procedure adopted, he exercised that lawful power honestly and in good faith. It is alleged by the Plaintiff that D.W.1 acted maliciously when purporting to expel the Plaintiff. In this connection I accept the evidence of D.W.1 and also the statement in his affidavit (paragraph 6, page 17 of Ex.P1) where he said "I deny that I was actuated by malice in expelling the Plaintiff. The decision to expel him was taken by me after consulting my senior teachers and after due consideration of the Plaintiff's conduct and character in school. To consider this question on disciplinary action against the Plaintiff, reports from form teachers and the Prefects' Board were first obtained and duly considered". It is suggested by the Plaintiff that the reason for the expulsion may be attributed to the fact that the Plaintiff had lodged a report against him for assault. I do not find any substance in this allegation; at any rate, I accept without reservation the statement in the affidavit sworn by D.W.1 appearing on page 20 of Ex. P1, paragraph 10, which says that :-

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"I say that this report by the Plaintiff had not influenced my decision to expel the Plaintiff. I had already decided to expel the Plaintiff but was only waiting to discuss this with my Senior Teachers which I did in early April, 1968. The latest incident took place on the 2nd of April, 1968. The report by the Plaintiff was not made to the Police till the 10th April 1968 and a copy thereof was sent to me a few days later".

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40

It is needless for me to repeat that it is abundantly clear from the evidence that D.W.1 had good reasons for wanting to expel the Plaintiff. In these circumstances, I find that the Plaintiff's allegations that the 1st Defendant had acted unlawfully, maliciously, capriciously and without valid reasons are without substance and ill-founded.

To my mind, there is no shadow of a doubt as to the honesty and bona fide of the head teacher.

In the High  
Court in  
Malaya

No. 17

Judgment of  
Abdul Hamid, J.  
5th September  
1969

(continued)

10 The question before the Court is whether the Plaintiff, before the expulsion order was issued, acquired adequate notice of his impending expulsion and, if he did, whether an adequate opportunity to explain was accorded him. In short, whether D.W.1 before arriving at a decision to expel the Plaintiff did apply some form of procedure in compliance with the rules of natural justice.

20 The learned Legal Adviser contended that the head teacher was satisfied and as such he could expel and there need not be any specific charge levelled against the Plaintiff. He added that the power to expel vested with the head teacher is discretionary. I am unable to accept this contention. As I said earlier, the process of satisfying himself would require him (D.W.1) to enquire into the instances of the Plaintiff's misconduct and hearing the explanation, if any, in rebuttal. I do not disagree that a certain amount of discretion is vested in D.W.1 in the exercise of his function, nevertheless, as in Fernando's case, his function is quasi-judicial and he is therefore required to act quasi-judicially. Furthermore, it cannot be implied from Regulation 8 that the power to expel was solely in the discretion of D.W.1 (See R. v. Senate of the University of Aston, Ex. parte. Roffey and Anor. (1969) 2 A.E.R. p.964). The learned Legal Adviser also submitted that the head teacher had adequately warned the Plaintiff that he might be expelled on 2nd April, 1968. He argued that this was sufficient compliance with the rules of natural justice as the head teacher was not required to apply the rules strictly. It is a question of fact for the court to consider whether in the circumstances a warning of the nature given by the head teacher was sufficient compliance with the rules of natural justice.

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Dato S.P. Seenivasagam, counsel for the Plaintiff, alleges that there was a



In the High Court in Malaya

No. 17

Judgment of Abdul Hamid, J. 5th September 1969

(continued)

violation of the rules of natural justice. The interview on 2nd April, 1968, he said, was primarily for the purpose of enquiring into the incident at the talentime show. The Plaintiff was not informed that he was to be expelled and he was not made to realise that he was in a position to be expelled. He submitted that it was necessary to call upon the Plaintiff to show cause why he should not be expelled and failure to do this is a violation of the rules of natural justice.

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D.W.1 himself gave evidence that he did inform the Plaintiff that he would probably expel him (Plaintiff) or take some action or something to that effect. D.W.1 also said in the affidavit on page 18 of Ex. P1 that he called the Plaintiff up for questioning as to his bad behaviour at the talentime show with two other boys. D.W.1 contended that the Plaintiff had reasons to believe that he (D.W.1) may expel him. I accept this. Nevertheless, it is probable that the Plaintiff failed to realise that D.W.1 was, in fact, proposing to take such drastic action. In any event, it is, I think, abundantly clear that at no time did D.W.1 give any definite intimation or warning to the Plaintiff during the interview on 2nd April, 1968, that he was going to be expelled unless he could give an explanation. He could not in the circumstances have done so since at that time no definite action was contemplated by D.W.1. D.W.1 admitted in the affidavit on page 18 of Ex. P1 that he only decided the expulsion after several discussions and receiving verbal reports from the form teacher. It is therefore evident that while the intention to expel the Plaintiff may be forming in D.W.1's mind, he did not however on 2nd April, 1968, come to any definite decision - not until 10th April, 1968. The Plaintiff could not therefore have known or have had reasons to believe that he was appearing before a disciplinary proceeding for his expulsion. At best, it can perhaps be inferred that he knew or had good reasons to believe that some form of punishment may be imposed.

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The Regulations clearly did not provide any specific procedure to be followed.

Nevertheless, in exercising a quasi-judicial function it is essential that D.W.1 should give an equitable decision. The Plaintiff is at least entitled, I think, to an opportunity of being heard. The question in the present case is whether D.W.1, by proceeding in the manner that he did, complied with the rules of natural justice.

In the High  
Court in  
Malaya

                      
No. 17

Judgment of  
Abdul Hamid, J.  
5th September  
1969

(continued)

10           The fact that no specific breach is  
prescribed under Regulation 8 does not  
necessarily mean that the head teacher is  
not obliged to inquire into the state of  
affairs relating to the Plaintiff's conduct  
before satisfying himself that it was  
necessary or desirable to expel the Plaintiff  
for purposes of maintaining discipline or order  
in the school. In that respect, I find no  
significant distinction between the effect of  
20           the provision of clause 8 of the General Act  
in Ferando's case and Regulation 8 of this  
case. In exercising a quasi-judicial function  
D.W.1 is therefore required to act quasi-  
judicially.

30           It is true to say that the rules of  
natural justice need not in certain circum-  
stances be applied strictly, but this does  
not mean that the inquiry may be conducted  
with complete disregard to the rights accorded  
by the principles of natural justice. What,  
therefore, are authoritative pronouncements  
on the principles of law governing audi alterem  
partem rule when exercising a function in this  
kind of case? In Ramesh Chandra's case (supra)  
His Lordship Narasimham C.J. after reviewing  
English, American and Indian authorities, said  
at page 203 :-

40           "Thus a review of the Indian decisions  
shows a divergence of view as to  
whether an order of expulsion or  
rustication passed by the head of an  
educational institution against an  
offending pupil would be a quasi-  
judicial act or purely administrative  
act. The majority view which is based  
on the judgment of Bose J. in A.I.R. 1952  
Cal 594 seems to be that it is a quasi-  
judicial act. But whether it is a

In the High  
Court in  
Malaya

No. 17

Judgment of  
Abdul Hamid, J.  
5th September  
1969

(continued)

quasi-judicial act or administrative Act, the majority view of the High Courts (even that of Allahabad High Court as reflected in the decision of Aggarwalla J.) seems to be that the student concerned should get a reasonable opportunity of showing cause against the proposed punishment. The English and American decisions cited above also support the view that even in respect of such administrative acts the rules of natural justice embodied in the maxim audi alterem partem should be complied with."

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As I said earlier, the elements of "decision" may be implied from the language of Regulation 8, and as was said by His Lordship Narasimham C.J. in Ramesh Chandra's case, a "decision" necessarily involves hearing all parties concerned.

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I also referred earlier to Fernando's case. In this case as in Fernando's case no special form of procedure is provided for the head teacher to follow in the process of satisfying himself before deciding to expel the Plaintiff. In Fernando's case, His Lordship Lord Jenkins said at page 638 :-

"The clause is silent as to the procedure to be followed by the Vice-Chancellor in satisfying himself of the truth or falsity of a given allegation. If the clause contained any special directions in regard to the steps to be taken by the vice-chancellor in the process of satisfying himself he would, of course, be bound to follow those directions. But as no special form of procedure is prescribed, it is for him to determine the procedure to be followed as he thinks best, but, to adapt to the present case the language of the judgment of this Board in De Verteuil v. Knaggs (1918) A.C. at p.560) subject to the obvious implication that some form of inquiry must be made, such as will enable him fairly to determine whether he should

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hold himself satisfied that the charge in question has been made out. As was said by Lord Shaw of Dunfermline in Local Government Board v. Arlidge (1915) A.C. at p.138, of the authority there concerned it

In the High  
Court in  
Malaya

No. 17

Judgment of  
Abdul Hamid, J.  
5th September  
1969

(continued)

10           '.....must do its best to act justly, and to reach just ends by just means'. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means."

And at page 637, His Lordship speaking on the rights accorded by the principles of natural justice referred to some of the principles laid down in previous cases, and at pages 637/8 said :-

20           "These rights have been defined in varying language in a large number of cases covering a wide field. Their Lordships do not propose to review these authorities at length, but would observe that the question whether the requirements of natural justice have been met by the procedure adopted in any given case must depend to a great extent on the facts and circum-  
30           stances of the case in point. As Tucker, L.J., said in Russell v. Duke of Norfolk ((1949) 1 A.E.R. 109 at p.118) :

40           'There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth.'

In the earlier case of General Medical Council v. Spackman ((1943) 2 A.E.R. 337 at p.341) Lord Atkin expressed a similar view in these words:

In the High  
Court in  
Malaya

No. 17

Judgment of  
Abdul Hamid, J.  
5th September  
1969

(continued)

'Some analogy exists no doubt between the various procedures of this and other not strictly judicial bodies; but I cannot think that the procedure which may be very just in deciding whether to close a school or an insanitary house is necessarily right in deciding a charge of infamous conduct against a professional man. I would, therefore, demur to any suggestion that the words of Lord Loreburn, L.C., in Board of Education v. Rice ((1911) A.C. 179 at p.182) afford a complete guide to the General Medical Council in the exercise of their duties.'

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With these reservations as to the utility of general definitions in this branch of the law, it appears to their Lordships that Lord Loreburn's much quoted statement in Board of Education v. Rice still affords as good a general definition as any of the nature of and limits on the requirements of natural justice in this kind of case. Its effect is conveniently stated in this passage from the speech of Viscount Haldane, L.C. in Local Government Board v. Arlidge ((1915) A.C. 120 at p.132), where he cites it with approval in the following words:

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'I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In Board of Education v. Rice he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, in as much as that was a duty which lay on every one who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The Board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who

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were parties in the controversy to correct or contradict any relevant statement prejudicial to their view.'

In the High  
Court in  
Malaya

No. 17

Judgment of  
Abdul Hamid, J.  
5th September  
1969

(continued)

From the many other citations which might be made, their Lordships would select the following succinct statement from the judgment of this Board in De Verteuil v. Knaggs ((1918) A.C.557 at p.560):

10 'Their Lordships are of opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice.'

20 The last general statement as to the requirements of natural justice to which their Lordships would refer is that of Harman, J., in Byrne v. Kinematograph Renters Society, Ltd. (1958) 2 A.E.R. 579 at p.599, of which their Lordships would express their approval. The learned judge said this:

30 'What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more.'

40 The principle laid down in Fernando's case was applied two years later in Hoggard v. Worsbrough Urban District Council (supra) where His Lordship Winn J. at page 471 said :-

"Where two parties are in dispute, and the obligation of some person or body is to decide equitably between the competing claims, each claim must receive consideration and each claimant

In the High  
Court in  
Malaya

No. 17

Judgment of  
Abdul Hamid, J.,  
5th September  
1969

(continued).

must, as I rule, be invited - not merely left so that if he chooses to take the initiative he can do it - to put forward the material in the form of documents or accounts which he desires to have considered, and an opportunity must be afforded to him of making comment on material of the same character which has been put forward by rival claimants and which the council are proposing to consider."

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In the light of the principles laid down in the cases cited above, I am satisfied that in the circumstances of the present case a mere warning by D.W.1 that the Plaintiff may probably be expelled fell short of the requirements of natural justice. D.W.1 in my opinion, omitted to provide adequate notice to the Plaintiff to enable him to truly appreciate the exact nature and purpose of the proceedings when he interviewed the Plaintiff at his office on 2nd April, 1968. In my view, such omission had the necessary effect of depriving the Plaintiff of a fair opportunity of being heard. Furthermore, such omission, to my mind, goes to the root of the very basis of the requirements of natural justice and is serious enough to warrant a finding by this Court that it is sufficient to invalidate the decision of the head teacher. For these reasons, I hold that the claim must succeed.

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Having thus decided, I do not propose to consider the effect of the proceedings before and the decision of, the Board of Governors.

As regards the claim for damages, I am not satisfied that the Plaintiff has succeeded in proving the Defendants' liability. The 1st Defendant's omission to provide adequate notice in the circumstances mentioned above does not legally entitle the Plaintiff to claim damages unless it is shown that D.W.1 acted dishonestly, maliciously or in bad faith. I have, however, found that in the circumstances of this case D.W.1 acted honestly and bona fide.

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In the High  
Court in  
Malaya

No. 18

Order of the  
High Court  
5th September  
1969

(continued)

O R D E R

BEFORE THE HONOURABLE  
DATO JUSTICE ABDUL  
HAMID BIN HAJI OMAR

IN OPEN COURT  
THIS 5TH DAY  
OF SEPTEMBER,  
1969

UPON HEARING Dato S.P. Seenivasagam and Mr. J. Nadchatiram of Counsels for the Plaintiff and Mr. Abdullah bin Ngah, State Legal Adviser, Counsel for the Defendants IT IS HEREBY DECLARED that the order of expulsion of the Plaintiff as a pupil from the King George V School, Seremban, made by the 1st Defendant with effect from the 4th day of May, 1968 is null and void and of no effect, and IT IS FURTHER ORDERED that the Plaintiff be reinstated as a pupil in the King George V School, Seremban, forthwith and IT IS HEREBY LASTLY ORDERED that the Defendants do pay the Plaintiff costs of the action on lower scale and as taxed by a proper officer.

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Given under my hand and the seal of the Court this 5th day of September, 1969.

Sgd: Illegible

Assistant Registrar,  
High Court,  
Seremban.

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No. 19

NOTICE OF APPEAL

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

In the  
Federal Court  
in Malaysia

No. 19

Notice of  
Appeal  
20th September  
1969

BETWEEN

- 10 1. K.Anandarajan, (Headmaster) )  
King George V School, )  
Seremban. )
  - 2. The Minister for Education, )  
Malaysia. )
  - 3. Board of Governors, )  
King George V School, )  
Seremban. )
- Appellants

- and -

- 20 N. Mahadevan, (an infant)  
suing by his father and  
next friend M. Nadchatiram
- Respondent

(In the matter of Civil Suit No. 101  
of 1968 in the High Court in Malaya  
at Seremban

Between

- N. Mahadevan, (an infant)  
suing by his father and  
next friend M. Nadchatiram
- Plaintiff

- and -

- 30 1. K.Anandarajan, (Headmaster)  
King George V School,  
Seremban.
- Defendants

Take notice that the above named  
Appellants, K. Anandarajan, Headmaster,  
King George V School, Seremban, the

In the  
Federal Court  
in Malaysia

No. 19

Notice of  
Appeal  
20th September  
1969

(continued)

Minister for Education, Malaysia and  
The Board of Governors, King George V  
School, Seremban being dissatisfied with  
the decision of the Honourable Dato  
Justice Abdul Hamid bin Haji Omar given  
at Seremban on the 5th day of September,  
1969 appeal to the Federal Court against  
the whole of the said decision.

Dated this 20th day of September, 1969.

Senior Federal Counsel 10  
Solicitor for the Appellants.

To:

The Registrar,  
The Federal Court,  
Malaysia,  
Kuala Lumpur.

The Assistant Registrar,  
High Court,  
Seremban.

Messrs. Saraswathy Devi & Co., 20  
Room 103, 1st Floor,  
Chan Wing Building,  
Jalan Mountbatten,  
Kuala Lumpur.

Filed this 20th day of September, 1969

(Sd) CHAN HUAN ENG  
Penolong Pendaftar,  
Mahkamah Tinggi,  
Seremban.

The address for service of the Appellants 30  
is c/o Legal Adviser's Chambers, Negeri  
Sembilan, Seremban.

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No. 20

MEMORANDUM OF APPEALIn the  
Federal Court  
in Malaysia

No. 20

Memorandum of  
Appeal  
28th October  
1969

The abovenamed appellants appeal to the Federal Court against the whole of the decision of Honourable Dato' Justice Abdul Hamid bin Haji Omar, given at Seremban on 5th September 1969 on the following grounds :

- 10 1. Although the principles of natural justice applies in this case, the principle to be applied need not necessarily conform to a strict observance of formalities.
2. On the facts and circumstances of this case, the learned Judge was wrong both in law and in fact in holding that there was insufficient compliance with the principle of natural justice.
- 20 3. Even if there was no sufficient compliance with the principle of natural justice, the learned Judge failed to consider whether the Plaintiff was in any way prejudiced thereby.
4. Even if there was no sufficient compliance with the principle of natural justice, the learned Judge failed to consider the discretionary nature of the relief sought for and in the circumstances of the case he ought not to have automatically and as a matter of course granted the relief.
- 30 5. In view of the findings by the learned Judge and the evidence before him, the learned Judge ought not to have awarded costs against the Appellants.
6. In making the order of reinstatement, the learned Judge failed to consider that the order given contravened the proviso to section 29 of the Government Proceedings Ordinance, 1956.

Dated this 28th day of October, 1969.

40 Sd. Abdullah bin Ngah  
Senior Federal Counsel,  
Solicitor for the Appellants.

In the  
Federal Court  
in Malaysia

No. 20

Memorandum of  
Appeal  
28th October  
1969  
(continued)

To:

The Chief Registrar,  
Federal Court,  
Kuala Lumpur.

and to

M/s. Saraswathy Devi & Co.,  
Advocates & Solicitors,  
Room 103 1st Floor,  
Chan Wing Building,  
Jalan Mountbatten,  
Kuala Lumpur.

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The address for service of the appellants  
is Senior Federal Counsel, Legal Adviser's  
Chambers, Negri Sembilan & Malacca, Seremban.

No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

No. 21

WRITTEN SUBMISSION BY THE SOLICITOR  
GENERAL FOR APPELLANTS

PART I - Facts

For the purpose of this Appeal the  
facts of the case may be stated as follows.  
At the material time the First Appellant  
was the Headmaster of King George V  
Secondary School, Seremban, and the Respon-  
dent was a Form VI pupil in that school.  
Following a report that the Respondent and  
three other boys had misbehaved themselves  
during a Talentime Show held by the school  
on the 1st of April, 1968, the First Appellant  
on the 2nd of April, 1968 called the Res-  
pondent and the three other boys into his  
office for the purpose of inquiring into  
the report. At first he questioned the  
Respondent and the three boys together in  
a group but later he interviewed them  
separately one by one. As a result of this  
inquiry one boy by the name of Allen Thong  
was suspended forthwith for the remainder  
of the First term of the school.

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2. In the interview with the Respondent,

the First Appellant asked the Respondent about the report of misbehaviour by the Respondent at the Talentime Show and also about his misbehaviour on previous occasions. The Respondent denied some of the allegations but admitted some of them. At the end of the interview, the First Appellant was satisfied that the Respondent was guilty of misbehaviour and decided that he should be expelled from the school. He did not award the punishment there and then but instead he deferred it until the 5th May, 1968 although he intimated to the Respondent and warned him that he would probably be expelled.

In the  
Federal Court  
in Malaysia

No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

3. The First Appellant deferred the making of the order of expulsion because he wanted to counter-check his conviction by consulting his colleagues about the proposed punishment. He did consult his colleagues. On the 10th of April, 1968, he fully made up his mind that the proper punishment was expulsion. In the meantime, the school was closed for the first term holidays and moreover the First Appellant had to go to Johore Bharu for official business. There was, therefore, no time to convey the decision to the Respondent until the school was reopened on the 5th of May, 1968. In the meantime the Respondent lodged a report to the Police alleging that the First Appellant had mistreated him.

4. When the school was reopened, the First Appellant made an announcement in the school hall that a pupil would be expelled and thereafter he called the Respondent into his office and told him that he was being dismissed, and a letter to that effect addressed to his parents was given to the Respondent.

5. The Respondent's father appealed to the Board of Governors of which he was a member. The appeal was duly heard by the order of expulsion made by the First Appellant on the Respondent was confirmed by the Board of Governors.

In the  
Federal Court  
in Malaysia

          
No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

6. The Respondent then sued the First Appellant, the Board of Governors and the Minister for Education for a declaration that his expulsion from the school was null and void. He also claimed that he should be reinstated and asked for damages on the ground that the purported expulsion by the First Appellant was motivated by malice and bad faith.

7. Before the suit was tried, the Respondent took out a summons-in-chambers asking for an interim order that he should be reinstated. The summons-in-chambers came before Mr. Justice S.M. Yong on the 5th of May, 1968, and after the proceedings before the Judge had proceeded half way, Mr. Ajaib Singh, Senior Federal Counsel, who appeared on behalf of the Appellants, kindly consented to the interim order asked for by the Respondent on certain conditions. As a result of this, Mr. Justice Dato S.M. Yong made the order in the following terms :-

- (1) that the Respondent be reinstated in the King George V School, Seremban, pending the final hearing and determination of the suit;
- (2) that the Respondent was to remain subject to the school rules, regulations, and discipline;
- (3) that either party be at liberty to apply; and
- (4) that no order as to costs of the application for summons-in-chambers be made.

8. The suit was finally heard on 19th August, 1969 by another Judge, Mr. Justice Dato Abdul Hamid bin Omar who gave a reserved judgment on 5th September in the following terms :-

- (1) that the order of dismissal by the First Appellant was invalid because the rules of natural

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justice were not complied with;  
and

- (2) the claim for damages by the Respondent failed because the Respondent failed to establish that the purported order of dismissal was motivated by malice and bad faith.

10 The learned Judge made a further order that the Respondent be reinstated as a pupil of the King George V School, Seremban, and that the cost of the suit be borne by the Appellants.

In the  
Federal Court  
in Malaysia

No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

PART II - ARGUMENTS AND DECISION (1)  
ARGUMENT BY COUNSEL FOR THE RESPONDENT

20 In the lower court before Mr. Justice Dato Abdul Hamid, counsel for the Respondent submitted that the First Appellant did not comply with the rules of natural justice because he did not inform the Respondent that he was to be expelled nor was he made to realise that he was in a position to be expelled. Counsel for the Respondent, however, agreed that the inquiry by the First Appellant on the 2nd of April, 1968, was sufficient compliance with the rules of natural justice but that was only for the purpose of satisfying himself as to the need of expulsion. It was, however, not sufficient for the purpose of expulsion. For this purpose he submitted that the First Appellant must call upon the Respondent to show cause why he should not be expelled. Since the First Appellant did not say words to this effect to the Respondent, there was therefore a breach of the rules of natural justice.

30 2. He also argued that the First Appellant was actuated by malice and bad faith in the making of the order of dismissal.

ARGUMENT BY COUNSEL FOR THE APPELLANTS

40 3. The Legal Adviser, Negri Sembilan, on behalf of the Appellants, submitted that the rules of natural justice were not violated at all because there need



In the  
Federal Court  
in Malaysia

No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

not be any specific charge. The inquiry held by the First Appellant on the 2nd of April, 1968, sufficiently complied with the rules of natural justice and in any case there is evidence that the Respondent well knew that he would be expelled from the school, and that the First Appellant had given the Respondent a warning to that effect. It was also argued that there was no malice nor bad faith at all on the part of the First Appellant in the making of the order.

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DECISION BY MR. JUSTICE DATO ABDUL HAMID

4. The learned Judge held that there was no malice nor bad faith on the part of the First Appellant in the purported expulsion order and therefore rejected the Respondent's claim for damages.

5. On the question of the validity or invalidity of the expulsion order, the learned Judge held that the question before the court was whether the Respondent, before the expulsion order was issued, acquired adequate notice of his impending expulsion and if he did, whether an adequate opportunity to explain was accorded to him. The learned Judge considered that the First Appellant did not give any definite intimation or warning to the Respondent during the interview on the 2nd of April, 1968 that he was going to be expelled unless he could give an explanation. Consequently, he held that the rules of natural justice were not complied with.

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6. There was evidence, however, which was accepted by the learned Judge, that the First Appellant did inform the Respondent that he would probably be expelled and that the Respondent had reasons to believe that the First Appellant would expel him. The learned Judge held that this warning was not sufficient compliance with the rules of natural justice because it is probable that the Respondent had failed to realise that the First Appellant was proposing to take such a drastic action. He, therefore, considered that a mere warning that the

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Respondent may probably be expelled fell short of the requirements of the rules of natural justice. Hence he held that the expulsion order made by the First Appellant was invalid.

In the  
Federal Court  
in Malaysia

No. 21

PART III - SUBMISSION

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

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This appeal is limited to the finding and order of the learned Judge that the expulsion of the Respondent was null and void and to the order that the Respondent be reinstated and that the Appellant do pay the costs of the suit.

2. The Grounds of Appeal are enumerated at pages 2 and 3 of the Record.

GROUND 1 AND 2 COMBINED.

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3. The learned Judge should have held that the requirements of natural justice have been fully complied with. None of the cases on natural justice has ever gone so far as to require that the Respondent must be told that he would be expelled unless he explained. Further, none of these cases has ever gone so far as to say that natural justice can only be complied with by holding an inquiry as if it is a formal trial.

4. All that these cases ever say is that -

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- (1) the subject of the exercise of power should know the nature of his accusations;
- (2) he should be given an opportunity to state his case; and
- (3) the authority exercising the power must act in good faith.

5. As regards the third requirement, there was no question that the First Appellant did not act in good faith in view of the fact that the learned Judge had found as a fact that the allegation of malice and bad faith was not established.

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6. As regards the first requirements, this

In the  
Federal Court  
in Malaysia

          
No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

had been fully complied with. The Respondent knew the nature of the accusations against him when the First Appellant called him in and inquired into his bad conduct on the 2nd April, 1968. Natural justice does not mean that written or formal charges should be framed. There is no question that he did not know the nature of accusation against him. It was misbehaviour at talentime show and on previous occasions.

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7. As regards the second requirement, this too had been fully complied with. The Respondent had every opportunity to defend himself before the First Appellant on the 2nd April, 1968, when he admitted some of the accusations and denied some other accusations. The First Appellant in fact did not make his final decision until the 10th April, 1968. The brother of the Respondent, a lawyer, in fact came to see the First Appellant on the 3rd April, 1968, that is, one day after the First Appellant had provisionally made a decision to expel the Respondent. His brother discussed the Respondent's case with the First Appellant who remained unpersuaded by this discussion. There was no complaint that he was not given that opportunity. The Respondent did nothing else in the meantime but to lodge a report against the First Appellant on 4th April, 1968. The purpose of this lodging of report was definitely to prevent the First Appellant from expelling the Respondent. This clearly indicated that the Respondent knew that he was to be expelled.

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8. Yet despite all these three requirements having been fully satisfied the Respondent still claims that the rules of natural justice were not complied with. They were not complied with because in his opinion, which the learned Judge accepted, he was not told that he would be expelled and was not asked to explain or show cause why he should not be expelled. It is submitted that the law on natural justice does

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not go all that far.

9. Even if the law requires the First Appellant to inform the Respondent that he would be expelled unless he explained, there is plenty of evidence to show that the Respondent knew that he would be expelled and that the First Appellant had verbally informed and warned the Respondent to this effect. This was so found by the learned Judge and the evidence to this effect appears in the following parts of the Record -

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- (1) Judge's finding - p.125, Line E etc.
- (2) First Appellant XXD - pp. 17 - 18 p. 20
- (3) Respondent's Police Report - p. 32
- (4) First Appellant's Affidavit - pp. 38 - 39, para 3  
p. 40, para 7  
p. 42, para 42
- (5) Affidavit of Dato' Ab. Jalil - p. 63, para 3  
p. 64, para 4
- (6) Affidavit of Respondent - p. 75  
p. 76, para 2(vii)
- (7) Affidavit of J. Nadchatiram & other - p. 81
- (8) Respondent's evidence - p. 87, lines E-F
- (9) Evidence of Respondent's father - p. 91, lines E-F  
p. 93, Lines D-E
- (10) Evidence of First Appellant - p. 95, lines E  
p. 96, lines E-F  
p. 98, lines B-C  
pp. 98-99, lines F-G  
p. 101, lines C & D-G  
p. 102, lines A-C  
p. 103, line B  
p. 105, lines B-D

10. This case, therefore, turns upon the delay by the First Appellant in making known

I In the  
Federal Court  
in Malaysia

            
No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

In the  
Federal Court  
in Malaysia

No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

his decision. It is submitted that the delay in making the expulsion order has nothing to do with the principles of natural justice which were fully complied with earlier and certainly does not call for another inquiry.

11. It is submitted that this is very much the same as the case of Regina v. Metropolitan Police Commissioner Ex parte Parker 1953 I WLR page 1150.

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In this case the power to revoke a taxi-cab licence from a taxi driver was vested in the Commissioner of Police. The Commissioner having decided to withdraw the licence from a particular taxi driver delayed in communicating his decision to the taxi driver because in the meantime at the suggestion of the Assistant Commissioner he wished to confront the taxi driver with two policemen. After he had been confronted with, the decision was announced. It was held that rules of natural justice were fully complied with.

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12. The submission is supported by S.A. de Smith, Second Edition, p. 170 -

"Where the giving of a decision amounts to nothing more than the promulgation of a decision already made elsewhere, it is pointless to insist that these prejudiced by the formal "decision" have an implied right to make representations to the organ by which it is issued".

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Other misdirections.

13. There are a number of misdirections made by the learned Judge and these are as follows :-

(1) page 118 - paragraph: "Regulation 8 seems to me to require that the head teacher ... the pupil's misconduct justifying expulsion".

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- 10 (2) page 120 - paragraph: "In the instant case although under regulation 8 .... the word "decided" is not used, the effect of the language used seems to me to support the view that the order of the head teacher is a quasi judicial order ... It is a quasi judicial order".
- In the  
Federal Court  
in Malaysia  

---

No. 21  
Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970  
(continued)
- 20 (3) pages 123 - paragraph: "The question & 124 before the Court is whether the Plaintiff before the expulsion order was issued, acquired adequate notice of impending expulsion ... some form of procedure in compliance with the rules of natural justice".
- 30 (4) page 124 - in the middle of the second paragraph: "I am unable to accept this contention. As I have stated earlier the process of satisfying himself would require him (D.W.1) to inquire into the instances of the Plaintiff's misconduct and rehearing the explanation, if any, in rebuttal ...." nevertheless, as in Fernando's case, his function is quasi-judicial and is
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In the  
Federal Court  
in Malaysia

No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

- therefore required to act quasi judicially.
- (5) page 125 - middle of first paragraph: "It is a question of fact for the Court to consider whether in the circumstances a warning of the nature given by the head teacher was a sufficient compliance with the rules of natural justice." 10
- (6) pages 125 to 126 - bottom of third paragraph: "In any event it is, I think, abundantly clear that at no time D.W.1 give any definite intimation or warning to the Plaintiff during the interview on the 2nd of April, 1968, that he was going to be expelled unless he could give explanation". 20 30
- (7) page 126 - paragraph: "The regulations clearly did not provide any specific procedure to be followed. Nevertheless in exercising quasi judicial function it is essential that D.W.1 should give an equitable decision. The Plaintiff is at least entitled, I think, to an opportunity of being heard". 40

(8) pages 126 to 127 -  
the last paragraph:

"The fact that no specific breach is prescribed under regulation 8 does not necessarily mean that the head teacher is not obliged to inquire into the state of affairs relating to the Plaintiff's conduct .... In exercising a judicial function D.W.1 is therefore required to act judicially".

In the  
Federal Court  
in Malaysia

          
No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

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(9) page 127 - paragraph:

"It is true to say that the rules of natural justice need not in certain circumstances be applied strictly, but this does not mean that the inquiry may be conducted with complete disregard to the rights accorded by the principles of natural justice".

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(10) page 131 - paragraph: "I am satisfied that in the circumstances of the present case a mere warning ... 2nd April, 1968".

14. The Learned Judge having misled himself on the law that the Respondent must be told that



In the  
Federal Court  
in Malaysia

No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

he would be expelled unless he explained his conduct should automatically hold that the rules of natural justice were fully complied with in view of his finding that the First Appellant had warned the Respondent of the probability of expulsion. Instead, the learned Judge preferred to hold that the rules of natural justice were still not complied with because ;

- (a) "nevertheless, it is probable that he failed to realise that D.W.1 was in fact proposing to take such drastic action" - p. 125 lines F and G; 10
- (b) "D.W.1, in my opinion, omitted to provide adequate notice to the Plaintiff of enable him to truly appreciate the exact nature and purpose of the proceedings when he interviewed the Respondent at his office on 2nd April, 1968". - p.131 lines E and F. 20

The results of this decision are that :-

- (1) no one knows for certain in what way rules of natural justice have been violated. What are the rules in this case which have been broken?
- (2) do the rules of natural justice require a Headmaster not only to inform his pupil whom he wishes to expel the nature of the accusation of his misbehaviour but also to ensure that the pupil appreciates the seriousness of the accusation? This seems to be fallacious because to appreciate the seriousness of the situation or to treat it as a joke is purely the pupil's own choice. In this case no one will say that the Respondent had not been warned of the seriousness of the situation. 30 40

Law on the rules of natural justice.

In the  
Federal Court  
in Malaysia

No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

15. There is a wealth of authority and literature on the law pertaining to the rules of natural justice but on the topic which deals with disciplinary matters, the following references are useful :-

(1) Denis Lloyd: "The Disciplinary Powers of Professional Bodies"  
- 1950 M.L.R. Vol. 13, p. 281;

10 (2) A Note on Natural Justice (1960)  
L.Q.R. p. 177;

(3) S.A. de Smith's Judicial Review,  
Second Edition, Chapters IV & V,  
pp. 135 to 263.

16. Is an inquiry a necessary ingredient for complying with the rules of natural justice? As far as my research goes, the answer to the question is in the negative unless the statute prescribes that there  
20 must be an inquiry -

(1) Russell v. Norfolk (1948) 1 ALL E.R.,  
p. 488, Per Lord Goddard at p. 491;  
also (1949) 1 All E.R. p. 109;

(2) Local Government Board v. Arlidge  
(1915) A.C. 120 per Lord Shaw of  
Dunfermline at p. 138.

17. But where an administrative tribunal is to decide on a competing claim, the rules of natural justice demand that the tribunal  
30 should hear both sides -

(1) Board of Education v. Rice, (1911)  
A.C. 179; and

(2) Hoggard v. Worsbrough, U.D.C. (1962)  
1 All E.R. 468.

18. If the inquiry is held, what standard should it conform. Authorities are unanimous in saying that the standards of the inquiry is not that of a judicial trial -

In the  
Federal Court  
in Malaysia

No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

- (1) Board of Education v. Rice,  
(1911) A.C. 179: Per Lord  
Loveburn at p.182; A quasi  
judicial hearing is not bound  
to treat the inquiry as if it  
were a judicial trial:
  - (2) Andrew v. Mitchell, (1905) A.C.  
78 - Earl Halsbury L.C. at p.80;
  - (3) Wienberger v. Inglis (1919) A.C.  
606 - Lord Parmoor at p. 636: 10  
"The Committee are not, of  
course, bound to treat such a  
question as though it were  
a trial ..." and Lord Wrenbury at  
pages 640 - 641;
  - (4) Russells v. Norfolk (1949) All E.R.  
109 - Per Lord Tucker p. 117 and  
p. 118: "It was an inquiry in the  
course of which it emerged that  
there were matters for which the  
stewards held the trainer respon- 20  
sible";
  - (5) University of Ceylon v. Fernando,  
(1960) 1 All E.R. 631 Per Lord  
Jenkins at p. 638; "... inquiry  
must be made, such as will enable  
him fairly to determine whether  
he should hold himself satisfied  
that the charge in question has  
been made out". 30
19. The following are some cases in which  
the Court held that there was no breach of  
the rules of natural justice:-
- (1) Fernando's case (1960): Evidence  
of the Complainant was taken in  
the absence of the subject and it  
was held that the rules of natural  
justice were followed;
  - (2) Norfolk's case (1949): Subject was  
not given sufficient information 40  
as to the nature of the charges,  
nor was he supplied with copy of  
the Analyst's report and only part  
of the report was read to him.

he complained that he was not given the opportunity to call witnesses to defend himself. it was held that the rules of natural justice were followed;

In the  
Federal Court  
in Malaysia

          
No. 21

(3) Byrne v. K.R.S. Ltd., (1958)  
1 W.L.R. 762:

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

10

Plaintiff was confronted with a certain report concerning the running of a cinema hall by him. he was not allowed to see the report nor was his wife allowed to give evidence in the inquiry. It was held that the rules of natural justice were not broken even though the method of inquiry had to be deplored;

(continued)

(4) Davis v. Carew-Pole & others (1956)  
1 W.L.R. 833:

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It was held that the mere fact that a person appearing before a domestic tribunal had not been given formal notices of all the matters in which his conduct was to be called in question did not mean that the rules of natural justice were violated.

30

20. It is submitted that since regulation 8 of the Education (School Discipline) Regulations, 1959 - L.N. 61/1959 - lays down no procedure to be followed by the Headmaster, in order to comply with the rules of natural justice it will be sufficient if either of the following procedures be followed -

40

- (1) The Headmaster will inform the pupil concerned that he wishes to expel him on a number of grounds and ask the pupil to explain. If the pupil gives a satisfactory explanation, the matter will end there, but if he gives no satisfactory explanation, it is open to the Headmaster to expel him, or
- (2) the Headmaster will inform the pupil concerned that he has received reports of misconduct by the pupil

In the  
Federal Court  
in Malaysia

No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

and ask the pupil to explain about the report. If the pupil gives a satisfactory explanation against the report, the matter will end there but if the explanation is not satisfactory, then it is open to the Headmaster to hold the pupil guilty and expel him without having to inform the pupil any further that he will be expelled.

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21. It is submitted that in this case the rules of natural justice have been fully complied with.

Grounds 3 and 4

22. Even if the rules of natural justice were not fully complied with in the circumstances of the case, the Judge should not have made the declaration because the remedy being discretionary and not as a matter of course the Respondent by his own conduct did not show that he was in any way prejudiced thereby. In view of the finding by the learned Judge of the behaviour of the Respondent, the learned Judge should not have allowed this remedy. The learned Judge should have considered the importance of the public interest involved rather than the position of the Respondent alone.

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Ground 6.

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23. The order of reinstatement is in the nature of specific performance and injunction. This is clearly prohibited by the proviso (a) to section 29(1) of the Government Proceedings Ordinance No. 58 of 1956, which is as follows :-

"Provided that -

- (a) where in any proceedings against the Government any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order

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for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties;"

In the  
Federal Court  
in Malaysia

No. 21

Written Sub-  
mission by  
the Solicitor  
General for  
Appellants  
20th April  
1970

(continued)

Ground 5.

10 24. The suit instituted by the Respondent is really against the First Appellant because of the exercise of power by him under regulation 8 of the Education (School Discipline) Regulations, 1959 - L.N. 61/59. Whilst the Board of Governors, namely the Third Appellant, has participated in the expulsion of the Respondent in that the Board has affirmed the decision of the First Appellant, the Minister of Education, the Second Appellant, has nothing to do with the expulsion of the Respondent. To make the Minister a party to the proceeding is, therefore, an abuse of judicial process.  
20 No cost should therefore be awarded against the Minister and in fact the Respondent should be asked to pay the cost.

30 25. Further, according to the term of the judgment of the learned trial Judge the suit does not result in complete victory by the Respondent. His claim for damages was rejected because the learned Judge held that the allegation of malice and bad faith on the part of the First Appellant was not at all established - lines F to H, page 123. In fact, the learned Judge himself found as a fact that the Respondent "was not telling the truth to this court when he denied the allegations ..... was not only irresponsible, arrogant, spoilt and conceited but also inconsiderate and has no respect for authority" - lines C to F, page 122.

40 26. The learned Judge, therefore, should not have ordered cost against the Appellants.

In the  
Federal Court  
in Malaysia

No. 22

Notes of  
Argument  
recorded by  
Suffian Acting  
Lord President  
20th April  
1970

No. 22

NOTES OF ARGUMENT RECORDED BY SUFFIAN  
ACTING LORD PRESIDENT

Coram: Suffian, Acting Lord President,  
Malaysia;  
Gill, Federal Judge;  
Ali, Federal Judge.

Dato' Salleh Abas, Solicitor-  
General (Mr. Ajaib Singh with  
him) for Appellants 10

Dato' S.P. Seenivasagam (Mr. J.  
Nadchatiram with him) for Respondent

Solicitor-General addresses:

6 grounds,

I concentrate on grounds 1 and 2 today -  
as other grounds have been submitted in  
my written submission (Document No.46) and  
Court is pressed for time, but I stress I  
don't abandon other grounds not vouched in  
my oral submission. 20

Refers to facts.

L.N. 61/1959.

I concede rules of natural justice  
apply here. But submit that audi alteram  
partem not applicable here.

Senate of University of Aston (1969)  
2 A.E.R. 964, 965, headnote (iii). 973  
mention 3 conditions on which audi alteram  
partem applied.

Elain J., 977 C4. 30

University student is a member of the  
university. But a schoolboy is not a  
member of the school.

Education Act, 1961, empowers Government  
to establish a school - does not impose a  
duty on Government to do so.

Board of Management owns and runs the school - teachers are their employees - pupils are not members - they are licensees of Board.

In the  
Federal Court  
in Malaysia

No. 22

University Constitution creates many authorities - matriculated students are members of union and therefore of university.

Notes of  
Argument  
recorded by  
Suffian Acting  
Lord President  
20th April  
1970

(continued)

Fernando 1960 1 A.E.R. 631.

10 I submit here audi alteram partem does not apply.

Durayappah v. Fernando 1967 2 A.E.R. 152.

If rule audi alteram partem applies, I submit headmaster has complied with it.

P. 128.

I submit

- 20 (1) enquiry not necessary Duke of Norfolk - Goddard LCJ  
(2) if enquiry held, rules of natural justice must be complied with. They are if 3 tests laid down by Loreburn are satisfied (p. 130 of appeal record).

Submit that here Loreburn's 3 tests satisfied.

No evidence headmaster was in bad faith.

30 Law does not say respondent should be informed of the consequences of his act - only that respondent should know the nature of the accusation against him. He did know.

Third element. Good faith. No doubt good faith established here. P. 123 H - respondent acted maliciously, etc.

21st April 1970  
(continued)

First element. Respondent well knew the nature of accusation against him. On 2.4.68 headmaster called respondent for



In the  
Federal Court  
in Malaysia

          
No. 22

Notes of  
Argument  
recorded by  
Suffian Acting  
Lord President  
21st April  
1970

(continued)

explanation of conduct at talentime and  
on earlier occasion.

P. 95

P. 96, 2nd para. onwards to 98B.

Judge's finding (p.122) condemns  
respondent's conduct.

Crux of respondent's contention - he  
was not informed that he was going to be  
expelled - he did not say he had not been  
given reasonable opportunity of being heard. 10

Respondent did not say he did not  
understand the nature of the accusation.

I submit therefore all three elements  
of natural justice have been complied with on  
2.4.68. Delay in announcing decision in May  
immaterial - no need for further enquiry  
before decision is announced. Elain J. in  
University of Aston 1969 2 A.E.R. 978.  
Opportunity of being heard should be given  
before deciding - not between decision and 20  
publication thereof.

Judge held there should be 2 enquiries -  
submit he was wrong.

L.N. 61/59 - regulation 8.

P. 118 judge explains regulation 8.  
To 119-120.  
His stress on "decide" - "decision". He  
relies on s.107 Indian Education Act referred  
to in R. Khare AIR 1959 SC 107. He suggests  
there are 2 steps: 30

- (1) decision
- (2) order

and before each step rules of natural justice  
must be observed.

Rules of natural justice apply where  
statutory powers are exercised and affect  
rights of subjects - not necessarily where  
quasi-judicial decisions have to be made.

All headmaster had to do was to ask respondent to explain alleged misbehaviour and then decide, and he did that.

P. 32 police report made by respondent on 10.4.68 shows respondent knew what it was all about - he did not say he was to be expelled but to be suspended.

10 Respondent's brother's affidavit (p. 81) shows brother did go to see headmaster on 3.4.68, one day after headmaster's action on 2.4.68.

Submit respondent was given opportunity of being heard but did not use it.

What are rules of natural justice?

See my written submission p. 17.

Illustrations of rules of natural justice in the cases.

20 In Fernando 1960 1 A.E.R. 631. There only one enquiry. Evidence taken in absence of student concerned.

Byrne v. Kinematograph Reuters Society Ltd. 1958 1 W.L.R. 762.

Russell v. Duke of Norfolk & Others 1948 1 A.E.R. 488, 1949 1 A.E.R. 109.

There must be an inquiry where the authority has to decide competing claims.

1911 AC 179 Board of Education v. Rice Hoggard 1962 1 A.E.R. 468.

30 Submit headmaster has confronted respondent on 2.4.68 with complaints and therefore has observed rules of natural justice.

Board of Education v. Rice 1911 AC 179, Loreburn 182.

Rules of natural justice vary with cases and circumstances.

In the  
Federal Court  
in Malaysia

No. 22

Notes of  
Argument  
recorded by  
Suffian Acting  
Lord President  
21st April  
1970

(continued)

In the  
Federal Court  
in Malaysia

No. 22

Notes of  
Argument  
recorded by  
Suffian Acting  
Lord President  
21st April  
1970

(continued)

To insist that headmasters should ask pupils to show cause - is not necessary in my submission.

Andrews v. Mitchell 1905 AC 78, 80.  
Court must not insist on too minute observance of regularity of forms.

In discipline cases one should take different view -

Regina v. Metropolitan Police Commissioner Ex-parte Parker 1953 1 W.L.R. 1150. Goddard p. 1155. 10

Ex-parte Fry 1954 1 W.L.R. 730, 733.  
Headmaster in disciplining pupils does not act judicially or quasi-judicially.

Rules of natural justice have been complied with because -

(1) audi alteram partem not applicable (here no question of expelling respondent from membership of school); 20

(2) even if applicable, then 3 tests complied with:

- (a) respondent knew nature of accusation;
- (b) he was given opportunity of being heard;
- (c) headmaster acted in good faith;

(3) headmaster in disciplinary matters does not act quasi-judicially. Rules of natural justice applicable not because he acted quasi-judicially. All he had to do was to see his action was fair. 30

Suit against Minister of Education - no reason for that. He did not participate in decision - abuse of process.

DATO' SEENIVASAGAM ADDRESSES:

As to the law

No authority for proposition that a university student is member of a university and pupil is not a member of school.

If the former is true, then I submit pupil is equally member of a school.

Article 12, Federal Constitution, contemplates that every person has right to be admitted to school.

In the  
Federal Court  
in Malaysia

No. 22

Notes of  
Argument  
recorded by  
Suffian Acting  
Lord President  
21st April  
1970

(continued)

10 Aston University 1969 2 A.E.R. 973 F  
Donaldson. Normally rule audi alteram  
partem is not divorced from concept of  
natural justice.

de Smith, 2nd edition, p. 168-177.

Sahu v. Padhy 1959 A.I.R. Orissa 196.  
Does apply to school students. No difference  
between university and school.

de Smith, 1st edition, p. 143.

Ridge v. Baldwin 1964 AC 40 114E.

20 de Smith, 2nd edition, p. 158, last  
line. P.159 Audi alteram partem applies  
even if no lis inter partes.

Submit rules of natural justice apply -  
both legs apply:-

- (1) notice of charges;
- (2) opportunity of being heard.

Right to be heard by impartial tribunal -  
not available here because power given to  
headmaster.

30 Second ground: notice of charges. Head-  
master dealt with minor, told him off, did  
not specify allegations. Respondent not  
alerted to what was alleged against him and  
what was coming to him. That was not done.

Headmaster also acted on matters not  
brought to respondent's notice - especially  
conduct with female student which headmaster  
admitted was one of the main reasons.

In the  
Federal Court  
in Malaysia

No. 22

Notes of  
Argument  
recorded by  
Suffian Acting  
Lord President  
21st April  
1970

(continued)

On that one ground alone, submit complete failure of natural justice.

P. 106 C.

P. 104 D.

P. 197 - girl's affidavit gave reasonable explanation.

P. 160-170

P. 161 E.

P. 163 - incident not brought to respondent's notice. 10

P. 163 E.

P. 164.

P. 165 - C2 not put to respondent

Specific allegations pp. 160-170 not put to respondent on 2.4.68.

To 9.30 a.m. tomorrow

22nd April  
1970

(continued)

Resumed from yesterday

Parties as before.

Evidence is that headmaster made up his mind on 10.4.68. I submit he did not make up his mind definitely on 2.4.68. He said he wanted on 2.4.68 to wait for written report from other teachers. One of the main reasons (girl incident) never put to respondent. Headmaster admitted this 2 or 3 times. 20

General allegations put to respondent were insufficient notice.

Respondent should be made aware of every factor that might influence headmaster. 30

Kanda 1962 M.L.J. 169. Headnote, 2nd column, para. 1 to p. 173. Subsequent to 2.4.68 headmaster heard evidence without giving respondent opportunity to deny or explain.

Headmaster's attitude was to refuse to supply respondent anything he thought he was not bound to supply. P. 21 B onwards. P. 21 E. Headmaster admits respondent or his father did not know charges against him. P. 211.

10 P. 203. Respondent's father wrote to Board to appeal - and asking for grounds. Headmaster did not reply - thought he was not bound to give grounds.

P. 204, letter from me. Asks for grounds. Headmaster did not reply.

P. 105. Headmaster made mental decision to expel on 10.4.68.

P. 154 B. Headmaster said he was not obliged to give grounds for expulsion. This was before trial.

20 Only after hearing before Yong J. did headmaster realise his mistake - and during trial he tried to correct his error.

P. 96 E - on 2.4.68 he told them they were guilty nor that he was going to investigate.

30 P. 101 C. But on 2.4.68 respondent not there the whole day. See p. 87 from top to D4. Fact he was ill was confirmed by doctor, p. 149. Respondent examined by doctor at 2 p.m. on 2.4.68. Doctor's report shows respondent's state of mind - confirms that headmaster had shouted at him. Submit respondent had not been given a reasonable opportunity of being heard.

Respondent to given sufficient warning of expulsion.

1959 A.I.R. Orissa 196. 198 2nd column from top. 199 2nd column from top. 199 column 1 to the bottom.

Reports received by headmaster after 2.4.68.

In the  
Federal Court  
in Malaysia

No. 22

Notes of  
Argument  
recorded by  
Suffian Acting  
Lord President  
22nd April  
1970

(continued)

In the  
Federal Court  
in Malaysia

No. 22

Notes of  
Argument  
recorded by  
Suffian Acting  
Lord President  
22nd April  
1970

(continued)

P. 104, last 2 lines - admission by headmaster that reports against pupils were kept confidential.

P. 101 D - headmaster admitted receiving reports after 2.4.68, i.e., between 2.4.68 and 10.4.68.

P. 186 D, Board formally decided to keep things confidential.

Kanda says respondent entitled to have these reports.

10

P. 40 A3.

P. 98 C, headmaster admits reports made after 2.4.68.

P. 155, para. 7. Enquiry went on after 2.4.68 and decision taken on 10.4.68.

1955 A.I.R. Patna 372. Prasad v. State of Bihar, case against government servant. Here no ground for claiming privilege.

P. 20 - headmaster admitted enquiry took place from 2nd to 13th April.

20

He never saw boy again after 2nd April.

Wade on Administrative Law, 2nd edition, p. 193.

I now deal with some points raised by Solicitor-General.

Not true respondent knew the charges except the talentime incident - headmaster said one of the main reasons was girl incident.

Not true respondent had an opportunity to defend.

30

Not true respondent's complaint was that he was not informed of possibility of expulsion. See p. 86 B which gives respondent's real complaint - that he was not aware of charges. Pleadings, pp.10 and 11, paras. 11 and 12, give respondent's real complaint.

Not true respondent's main complaint was delay in conveying headmaster's decision.

Delay was only raised to show that headmaster did not decide on 2.4.68 - he decided later only after further enquiry.

Nadchatiram's affidavit not false at all. His representations quite successful as regards Thong. Show that headmaster had not then decided respondent's case on 2.4.68.

In the  
Federal Court  
in Malaysia

No. 22

Notes of  
Argument  
recorded by  
Suffian Acting  
Lord President  
22nd April  
1970

(continued)

The word "decide". Judge was right. Orissa case only says that before decision made there must be an enquiry and the rules of natural justice must be followed. No magic in word "decide".

Not true that enquiry necessary only where there is a lis inter partes.

de Smith, 2nd edition, p. 159.

Not true that approach is different in disciplinary cases.

Ex parte Parker 1953 1 W.L.R. 1150 not generally acted upon. Wade 2nd edition, p. 182(bottom) to p. 183 - not true that disciplinary powers are outside the law.

(To Ali F.J: I did personally interview the Minister of Education about this matter.)

de Smith p. 154. P. 160 Ridge v. Baldwin put things back where they should be.

Ref. Solicitor-General's written submission, para. 20.

Minor like respondent should be given some time. In Fernando it was a university student

Inconvenience to the authorities is no excuse for dispensing with requirements of natural justice.

Expulsion finishes a pupil's career.

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20

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In the  
Federal Court  
in Malaysia

No. 22

Notes of  
Argument  
recorded by  
Suffian Acting  
Lord President  
22nd April  
1970

(continued)

I stress that here we are dealing not with grown-ups but with minors.

Selangor rules, I submit, are a better and fairer guide - p. 106 and 215 of appeal record. Not followed here.

Minister of Education made a party - see p. 9 of Statement of Claim which gives reason. He is only a person interested. Costs not affected.

Solicitor-General says costs should not be awarded against defendants because of judge's finding on conduct of the boy. Father did everything possible, but they refused to give him grounds. In Kanda Government acted in good faith and yet ordered to pay costs. 10

Not true that even if headmaster held enquiry he would have come to same conclusion. 1943 2 A.E.R. 337 top.

SOLICITOR-GENERAL REPLIES: 20

Audi alteram partem does not apply to expulsion of school students. In University of Aston 1969 2 A.E.R. 964 it applies if 3 factors apply. Donaldson J., page 973 B. Students there were members of the university and were being deprived of membership.

975 D "approved status of students as legal members of the University".

But a schoolboy is not a legal member of a school. 30

Article 12 of Constitution deals only with discrimination - here no discrimination at all.

Orissa case - its effect limited to the facts of that case.

Professor Lloyd in 1950 13 Modern Law Review 281 on Disciplinary Powers

Headmaster here willing to recommend respondent to another school in Kuala Lumpur - p. 22. Board also - p. 43 C4, p. 43 D2.

Headmaster not a heartless man.

Not true expulsion would deprive him of an education.

10 Pp. 160-170. Respondent says reports made later and not told to respondent. Submit what happened on 2.4.68 was sufficient compliance with rules of natural justice.

Statement of Claim, p. 10, shows how case commenced - no mention of what happened on 2.4.68. So story began on 6.5.68. Rules of natural justice first mentioned in para.11. Before Hamid J., p. 125 B2.

20 Examine report, p.160, not dated;  
p.163 dated 15.4.68;  
p.165 " 2.4.68;  
p.167 " 17.4.68;  
p.168 " 20.4.68 -  
dealing with talentime show though date given was 23.3.68;  
p.170 dated 20.4.68 - on  
talentime show.

Submit the 6 reports - 1st report general and one specific allegation.

2nd report - general and on talentime.

Submit that on 2.4.68 reports had been given but verbally and written later.

30 Submit that on 2.4.68 headmaster already decided to expel - but he was cautious and decided to get written reports; that events of 10.4.68 did not affect his decision.

Byrne 1958 1 W.L.R. 762.

40 Girl incident. True headmaster admitted this was one of the main reasons for expulsion - but he did not say it was the only reason - so he had other reasons. Submit that on 2.4.68 he had already made up his mind - so girl incident not important.

In the  
Federal Court  
in Malaysia

No. 22

Notes of  
Argument  
recorded by  
Suffian Acting  
Lord President  
22nd April  
1970

(continued)

In the  
Federal Court  
in Malaysia

No. 22

Notes of  
Argument  
recorded by  
Suffian Acting  
Lord President  
22nd April  
1970

(continued)

Submit that Court should not insist on minute observance of the law by a layman. Headmaster in charge of school of 1,500 children and 34 teachers.

No law that rights of natural justice should be different in case of minor.

Respondent knew his legal rights - comes from legal family - judge found respondent a liar.

Respondent threatened to sue headmaster to his face - he reported the headmaster to police. Teachers were also threatened with suit. Brother lawyer never asked for adjournment. No need to give reasons because they were already known to respondent. 10

P. 38, para 3, headmaster informed father of reasons by phone. P. 17 F2 to 18C.

Respondent was informed of grounds, but did not avail himself of opportunity of exculpating himself. 20

CAV

Salinan yang di-akui benar Certified true copy

Sd:.....?.....  
Setia-usaha kepada Hakim  
Mahkamah Parsekutuan

Secretary to Judge,  
Federal Court,  
Malaysia,  
Kuala Lumpur.

22.4.1971

No. 23

Notes recorded  
by Gill F.J.  
20th April 1970

No. 23

30

Cor: Suffian, Ag. L.P.  
Gill, F.J.  
Ali, F.J.

NOTES RECORDED BY GILL F.J.

Dato Mohd Salleh bin Abas  
with Inche Ajaib Singh for appellants

Dato S.P. Seenivasagam  
with Inche J. Nadchatiram for respondent

In the  
Federal Court  
in Malaysia

DATO SALLEH ABAS:

No. 23

Notes recorded  
by Gill F.J.  
20th April 1970

(continued)

10 Grounds of appeal at pages 1 to 3.  
Six grounds enumerated. Read the six  
grounds. Although there are six grounds,  
I would concentrate on grounds 1 and 2.  
I have covered the other grounds in my  
written submissions, which I have sent to  
the court and supplied to the other side.

20 The record is long, but facts are not  
difficult. Action arose out of expulsion  
of respondent by the first appellant.  
Circumstances leading to expulsion. Mis-  
conduct at talentime competition on 1.4.68.  
Headmaster interviewed the respondent and  
three other boys at first together in a  
group but later separately. Decision to  
expel on 10.4.68. Acted under Regulation  
8 (L.N.61/59). Decision not carried out  
straightaway. School closed for holidays.  
On reopening of school on 5.5.68 expelled  
respondent.

Appeal by respondent's father to Board  
of Governors. The Board confirmed the  
decision of headmaster. Action in the High  
Court. Summons-in-chambers for an interim  
order. Interim order by consent.

30 Trial of action. Judgment that the  
rules of justice had not been complied with.  
No opportunity given to respondent to  
explain. Refer to judgment of Dato Hamid  
at page 123, 131. Made the declaration  
asked for, but ruled that no case had been  
made out for damages.

40 I concede that the rules of natural  
justice applied in this case, but that does  
not mean that "audi alteram partem" must  
be applicable in all cases wherever there  
are allegations of violation of rules.

Refer to R. v. Senate of the University  
of Aston, (1969) 2 A.E.R. 964, 973 (line E4),  
977 (line C). The facts of this case. A

In the  
Federal Court  
in Malaysia

No. 23

Notes recorded  
by Gill F.J.  
20th April 1970  
(continued)

case of a schoolboy cannot be treated as if he were a member of a University or a Club. School established under the Education Act, 1961. Gives legal powers to Government to set up schools. Powers given to Minister. Powers to Board of Governors or Board of Management. Even teachers not members of school, much less the students. A University is quite different. Expulsion from a University quite different from expulsion from a school. In this particular case the principle of "audi alteram partem" does not apply. Refer to Durayappah v. Fernando (1967) 2 A.E.R. 152, 158.

10

Even if I am wrong, the principle of "audi alteram partem" was complied with when respondent was interviewed on 2.4.68. Refer to page 128 of record.

An inquiry is not necessary, as being part of natural justice. Requirement of natural justice as laid down in Byrne v. Kinematograph Renters Society Ltd. (1958) 2 A.E.R. 579. Not a shred of evidence that Headmaster acted in bad faith. That leaves the other requirement. Law does not say that he should be told of the serious consequences. No authority for the proposition that the respondent should have been given notice of proposed action.

20

30

Adjourned until 10 a.m. tomorrow.

S.S. Gill.

21st April 1970  
(continued)

Hearing continued. Counsel as before.

DATO SALLEH ABAS (continuing) :

Three elements of rules of natural justice. Taking first the last element, there is no question of bad faith here, as would appear from the judge's judgment at page 123 (line F4).

Taking the nature of the accusation which the respondent had a right to know. The respondent well knew the nature of the

40

accusation because the first appellant called him to the office on 2nd April, 1968 and asked him about the report as regards his misbehaviour on 1.4.68 and some earlier occasions. Evidence of D.W.1 (first appellant) starting at page 95. Refer to second paragraph at page 96. The headmaster told the respondent whatever there was against him. In this connection refer to judge's findings as set out at pages 122 and 123 of record. The learned judge accepted the evidence of the headmaster. Not a shred of evidence of bad faith.

In the  
Federal Court  
in Malaysia

No. 23

Notes recorded  
by Gill F.J.  
21st April 1970

(continued)

Then there is the third element, namely, the opportunity to be heard. No complaint that he was not given an opportunity to defend but that he was not told that action was proposed to be taken against him. Particulars of misconduct given to respondent on 2.4.68. He admitted some and denied some.

All the elements of natural justice laid down by Harman J were complied with.

The fact that the decision was not announced until 5.5.68 does not mean that the rules of natural justice were not complied with. Refer to R. v. Senate of the University of Aston (1969) 2 A.E.R. 978.

Interpretation of Regulation 8 by the learned judge starting at page 118 of the record (line C3) up to page 120. Quite unjustifiable for the learned judge to import the word "decision" into Regulation 8 so as to bring this case within the case of Ramesh Chandra Sahu v. N. Padhy, A.I.R. (1959) Orissa 196. The judge here thought that there had to be two inquiries. In my submission he was wrong. He was of the opinion that rules of natural justice applied only if powers of the headmaster were quasi-judicial. English courts have done away with the distinction between administrative and quasi-judicial proceedings. All that was necessary here was an inquiry as to whether there was a case for expulsion. Not necessary for the headmaster to tell the respondent the nature of

In the  
Federal Court  
in Malaysia

No. 23

Notes recorded  
by Gill F.J.  
21st April 1970  
(continued)

the punishment which might be meted out to him. The boy knew of the consequences. This is clear from the report which the respondent made to the police. Report at page 32 of record. There is also the affidavit of his brother, J. Nadchatiram at page 81 of record. Paragraph 4 of that affidavit is completely different from the evidence of the headmaster. In my humble submission the respondent was given an opportunity to have himself heard and he did not avail himself of it.

10

What are the rules of natural justice with which we are concerned? I have dealt with the subject in my written submissions. All decided cases relate to the peculiar facts of those cases. Would refer to University of Ceylon v. Fernando (1960) 1 A.E.R. 631. There was only one inquiry in that case; Byrne v. Kinematograph Renters Society, Ltd. (1958) 1 W.L.R. 762; Russell v. Duke of Norfolk (1948) 1 A.E.R. 488, (1949) 1 A.E.R. 109; Regina v. Senate of the University of Aston (1969) 2 A.E.R. 965. An inquiry is necessary only where there are two competing claims. Refer to Board of Education v. Rice & others (1911) A.C. 179; Hoggard v. Worsbrough Urban District Council (1962) 1 A.E.R. 468. In this case the headmaster did hold some sort of inquiry. An inquiry is in fact not necessary. Authority can act on an information. Refer to Board of Education (1911) A.C. 179, 182. The inquiry on 2.4.68 in this case was sufficient.

20

30

Rules of natural justice must vary from case to case. A headmaster cannot be expected to follow the procedure followed by those learned in the law. Refer to Andrews v. Mitchell (1905) A.C. 78, 80.

In case of discipline one should take a different line of approach. Refer to Regina v. Metropolitan Police Commissioner Ex parte Parker (1953) 1 W.L.R. 1150, 1155; Ex parte Fry (1954) 1 W.L.R. 730, 733.

40

In this case rules of natural justice were fully complied with. The rules of audi

alteram partem need not apply. There was no question of expulsion from a society or club of a member. Even if audi alteram partem applied, the respondent knew the nature of the accusation; he was given the opportunity to defend himself and the headmaster acted in good faith. The headmaster was not acting quasi-judicially. All that was necessary for the headmaster was to see that the action taken was fair, and he acted in accordance with rules of common fairness.

In the  
Federal Court  
in Malaysia

No. 23

Notes recorded  
by Gill F.J.  
21st April 1970

(continued)

In this case the rule was against three persons. I do not know why the Minister was made a party. There was justification for suing the Board of Governors because they were involved.

DATO SEENIVASAGAM:

Would refer to law before dealing with facts. There is no distinction between a schoolboy and a University student. None of the cases turns on that decision. A pupil is equally privileged under the Constitution. Refer to Article 12 of Constitution. Right of admission to any institute of learning. Refer to R. v. Senate of University of Aston (1969) 2 A.E.R. 965, 973 (line F). Exceptions very rare where 'audi alteram partem' does not apply. Refer to de Smith on Judicial Review (2nd edition) page 168, 171. Refer to Ramesh Chandra Sahu v. N. Padhy, A.I.R. (1959) Orissa 196. Much depends on what a man is going to lose, so that status does not matter. Refer to de Smith (2nd edition) pages 143, (Ridge v. Baldwin (1963) 2 A.E.R. 66, (1964) A.C.79), 158. In this case the rules of natural justice applied. Both legs were applicable - notice of charges and opportunity to be heard. If the rule applied, was it applied to the facts of the case? Requirements are set out in Ridge v. Baldwin (1963) 2 A.E.R. 66, 114 (line E). In this case the headmaster had the power under statute. But it was his duty to bring home the charge to the boy. That was not done. Headmaster acted on matters which were not brought to the notice of the boy. They constituted the main reasons for the



In the  
Federal Court  
in Malaysia

No. 23

Notes recorded  
by Gill F.J.  
21st April 1970  
(continued)

expulsion of the boy. For example, his being in a room with a girl. This had happened before the headmaster took over. Refer to page 106, line C, page 104 line D. The boy could have rebutted this allegation. Affidavit filed by the girl at page 197.

Contents of reports at pages 160 to 170 were not brought to the notice of the respondent.

10

Adjourned until 9.30 a.m. tomorrow

S.S. Gill

22nd April 1970  
(continued)

Hearing continued. Counsel as before.  
DATO SEENIVASAGAM (continuing) :

I was referring yesterday to the reports received by the Headmaster. They contained a number of allegations which were not put to the respondent. The headmaster did not make up his mind until after these reports were received orally or in writing. No sufficient notice to respondent of the charges he had to meet. Refer to Kanda v. Government of Malaya (1962) M.L.J. 169. Here the headmaster received further reports after 2.4.68 which were made behind the back of the respondent. Attitude of first appellant as shown in his affidavit at page 21. See page 211. Letter at page 203. No reply to it. Letter at page 204. No reply to this letter either. Refer to page 105, line E, page 154 line B. Attempted to correct all this when he gave evidence at the trial. Admission by first appellant - at page 96 line D3, page 101 (whole day to investigation but respondent not present all the time). Refer to evidence of respondent at page 87. This confirmed by the evidence of doctor's report at page 149. This lends credence to the story to the respondent that the headmaster shouted at him. Can it be said in those circumstances that the respondent had a reasonable opportunity to be heard? Refer to Ramesh Chandra Sahu v. N. Padhy

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40

A.I.R. (1959) Orissa 196, 199. Warning that he may be expelled not sufficient notice.

In the  
Federal Court  
in Malaysia

No. 23

Notes recorded  
by Gill F.J.  
22nd April 1970

(continued)

10 Would again refer to reports received by the headmaster after 2.4.68. Refer to bottom of page 104 - reports kept confidential. Refer to page 101 line D. Still investigating after 2.4.68. Refer to page 186 regarding matters being discussed. Refer to page 40, page 98 line C, page 155 para 7. Inquiry went on after 2.4.68. Refer to Gopi Kishore Prasad v. Bihar State A.I.R. (1955) Patna 372. No ground here for claiming privilege as regards reports of other teachers. Refer to page 20 line E3. Refer to Wade on Administrative Law (2nd edition) page 193.

20 There was a complete failure to supply the respondent with charge and no reasonable chance given to him to explain.

30 Not true, as contended by counsel for appellants, that the charge was made known to respondent and that he had a reasonable opportunity to be heard. Not correct that the only thing respondent was not told was the nature of the action. Refer to page 86 line B. Refer to plaintiff's pleadings. It is said that we are complaining of the delay in notifying the respondent. We are not complaining about that. We say that there were to be further investigations. No decision to expel made on 2.4.68. J. Nadchatiram made representations on behalf of another boy. Quite clearly did not know anything about his brother's case.

40 No magic in the word "decide". To be satisfied involves a decision. Regulation 8 here in more or less same terms as in the case of University of Ceylon v. Fernando (1960) 1 A.E.R. 631. Absence of the word "decide" makes no difference.

An inquiry is necessary whether or not it is a *lis inter partes*. Refer to Smith of Judicial Review (2nd edition) page 159. Case of Ex parte Parker (1953) 1 W.L.R. 1150 has not been acted upon. Refer to Wade on

In the  
Federal Court  
in Malaysia

No. 23

Notes recorded  
by Gill F.J.  
22nd April 1970  
(continued)

Administrative Law (2nd edition) page 183.  
Disciplinary procedure not beyond judicial  
review. Refer to de Smith of Judicial  
Review (2nd edition) page 154. Refer to  
Ridge v. Baldwin (1964) A.C.40.

Method of dealing with a case such  
as this suggested at page 20 of written  
submission by counsel for plaintiff.  
What is suggested overlooks the fact that  
the headmaster was dealing with a minor. 10  
The parents should therefore have been  
informed. Procedure mentioned at bottom  
of page 215 perhaps could be followed.  
This is followed in Selangor.

Finally, I come to joinder of Minister.  
Reason set out at page 9 of Statement of  
Claim. That does not affect the question  
of costs. The respondent should not be  
deprived of costs against the other appel-  
lants. Costs were awarded in Kanda's case. 20

Refer to General Medical Council v.  
Spackman (1943) 2 A.E.R. 337 on the question  
as to whether the result would have been  
the same, irrespective of whether there  
was an inquiry or not.

DATO SALLEH ABAS (in reply) :

Rule of audi alteram partem does not  
apply in the case of a schoolboy as in  
the case of a University student. I base  
my argument on the case of Regina v. Senate  
of the University of Aston (1969) 2 A.E.R.  
964. Three principles enunciated in that  
case. Refer to page 973, line B, page 975  
line D. A pupil is not a member of the  
school, nor is a teacher a member of school  
as a University student is a member of the  
University. Article 12 of Constitution  
does not deal with right to education, but  
discrimination. Orissa case distinguishable  
from this case. Rules of natural justice 40  
will apply only where somebody stands to  
lose something. Refer to article in Modern  
Law Review, Volume 13, page 281. World of  
difference between the status of a University  
student and a schoolboy.

Headmaster prepared to recommend the boy for admission into a school in Kuala Lumpur. Refer to pages 22, 43 - possibility of admission to another school. Expulsion did not mean that he would be deprived of his chances of further education.

In the  
Federal Court  
in Malaysia

No. 23

Notes recorded  
by Gill F.J.  
22nd April  
1970

(continued)

10 Question of further reports. If  
audi alteram partem applied, did not  
what happened on 2.4.68 comply with that  
requirement? Refer to Statement of Claim  
at pages 9 to 11, and to judgment of  
learned judge at page 125. All the three  
elements of natural justice were satisfied  
on 2.4.68. Would ask Court to examine  
subsequent reports at pages 160 - 170.  
They concern the general behaviour of the  
student. Altogether six reports. Only  
first report contains a specific allegation.  
20 The headmaster was aware of what is  
contained in the reports on 2.4.68 and  
respondent was told about them. The head-  
master was cautious and waited until 10.4.68  
to make his decision. The written reports  
in no way influenced him. Refer to Byrne v.  
Kinematograph Renters Society Ltd. (1958) 1  
W.L.R. 762.

30 Incident of respondent being found in  
a room with a girl was one of the main  
grounds for the dismissal. This report  
could not have been the only reason for the  
expulsion. Applicability of rules of natural  
justice must depend upon the circumstances  
of the case. Rules of natural justice not  
different in the case of a minor. Respon-  
dent an intelligent boy. Knew his rights.  
Comes of a family of lawyers. The learned  
judge said of him that he lied. Told head-  
master about defamation. Lodged a report  
to the police. Reasons for expulsion were  
40 known to respondent. Respondent's father  
told about his son's misconduct - see page  
38, para 3, page 17 line F onwards and  
continued on page 18.

Headmaster took a reasonable time to  
inquire. All that the Court is concerned with  
is whether the rules of natural justice were  
complied with in the peculiar circumstances of  
this case.

C.A.V.

S.S. Gill



Refers to Senate of University of Aston (1969) 2 All E.R.964. Page 973 - reads third paragraph. Also page 977 - judgment of Blain J. - paragraph 3.

In the  
Federal Court  
in Malaysia

No. 24

Notes of Ali, F.J.  
20th April  
1970

Submits: Respondent cannot be treated as a member of the school - as if he is a university student or a club member.

(continued)

Education Act, 1961 empowers Government to establish schools.

10 Members of the Board of Governors are members of the school. Teachers are not. They are employees.

Submit: Pupils are not members of the school. All cases are concerned with University students, e.g. (Fernando's case. One Indian Supreme Court case.

Submits principle of audi alteram partem does not apply.

20 Also cites Durayappah v. Fernando (1967) 2 All E.R. p.152.

Next submits that even if the principle applied on facts, there is sufficient compliance.

Enquiry not necessary.

Adjourned to 10 a.m. tomorrow

Hearing continues.

21st April  
1970

SOLICITOR-GENERAL:

(continued)

Recalls 3 elements of rules of natural justice.

30 (1) Good faith established. Finding of trial Judge points to this.

(2) Nature of accusation. Submits respondent knows this. Refers to evidence. Called to office of Headmaster. Informed of his behaviour at talentime show and

In the  
Federal Court  
in Malaysia

No. 24

Notes of Ali, F.J.  
21st April  
1970

(continued)

on earlier occasions. Refers to Record - page 96, 2nd paragraph up to page 98. Findings of trial Judge on this portion of evidence by Headmaster. Pages 122 - 123. Trial Judge accepted Headmaster's evidence.

- (3) Opportunity to be heard. Refers to page 111 of Record. Refers to University of Aston (1969) 2 All E.R. 964, 978. Refers to Regulation 8, L.N.61/59. Refers to judgment on page 118 of Record.

10

(adjourns for 15 minutes).

Not necessary that powers should be quasi judicial for rules of natural justice to apply. Any power exercised is subject to the rules of natural justice.

Submit: In this case on facts there is no more necessary to be given an opportunity to be heard.

20

I ask - How long did proceedings in Headmaster's office last?

SOLICITOR-GENERAL:

Not in evidence but it must be some time. Anyway respondent knew on 2.4.68 that he was going to be expelled.

Refers to brother's affidavit - page 81.

This means respondent's brother had gone to see the Headmaster on 3.4.68.

30

Submits respondent had been given an opportunity to be heard. He did not avail himself of this.

What is the rule of natural justice? It means that any authority who exercises the powers must exercise fairly.

All decisions on rules of natural justice are related to the facts of the

particular case. Pronouncements by Court are important.

In the  
Federal Court  
in Malaysia

No. 24

Notes of Ali,  
F.J.  
21st April  
1970

(continued)

e.g. University of Ceylon v. Fernando (1960) 1 All E.R. 631 - only one enquiry.  
Byrne v. Kinematograph Renters Society Ltd. (1958) 1 W.L.R. 762.  
Russell v. Duke of Norfolk & Others (1949) 1 All E.R. 109.

10

On question whether an enquiry is necessary, only one case found where there are conflicting claims. Hoggard v. Worsbrough Urban District Council (1962) 1 All E.R. 468. Also Board of Education v. Rice & Ors. (1911) A.C. 179.

Submits rules of natural justice have been complied with.

20

The law does not require that there should be an enquiry.

Reads from page 182 of Rice's case. In this case everything was done by headmaster to comply with rules of natural justice.

Headmaster not trained as a lawyer to understand fully matters involving justice. Refers to Andrews & Ors. v. Mitchell (1905) A.C. 78. Reads from page 80. Minute observance of regularity of form not to be insisted upon.

30

Refers to Goddard L.J.'s judgment in Regina v. Metropolitan Police Commissioner Ex parte Parker (1953) 1 W.L.R. 1150. Reads from page 1155. Passage starts "He was in fact exercising ....."

Also refers to Ex parte Fry (1954) 1 W.L.R. 730. Reads from page 733. Passage starts "It seems to me impossible ....."

40

Finally submits: Rules of natural justice have been complied with.



In the  
Federal Court  
in Malaysia

No. 24

Notes of Ali,  
F.J.  
21st April  
1970

(continued)

Recapitulation - Audi alteram partem  
does not apply.

Even if it applies the necessary tests  
have been complied with. The 3 elements  
required have been complied with.

Headmaster in exercising disciplinary  
powers is not acting quasi-judicially.  
All that was necessary was to act fairly.

(This concludes grounds (1) and (2)).

Others are in written submission.

10

Why Minister of Education had been  
sued? Submits an abuse of legal procedure.

DATO' S.P. SEENIVASAGAM REPLIES:

Addresses on law. No authority for  
proposition to distinguish position of  
university student and school pupil.

Submits: No difference. None of the  
cases cited turns on that point.

Pupil is also a privileged person.

Article 12 of the Constitution. There  
is right for pupils to be admitted to  
educational institutions.

20

In University of Aston's case (1969)  
All E.R. 964. Reads from page 973. Sub-  
mits audi alteram partem applies. There  
may be exceptional cases in which it does  
not apply.

Refers to De Smith on Judicial Review  
(2nd Edition) P. 168.

Refers to (1959) A.I.R. (Orissa) 196.  
Sahu v. Padhy.

30

Refers again to De Smith on Judicial  
Review (2nd Edition) P. 143.

Refers to Ridge v. Baldwin (1964) A.C.40  
Turning point in the law.

Refers again to De Smith on Judicial Review.

Submits audi alteram partem must apply to this case in view of the decision in 1963 - Ridge v. Baldwin.

Query: Has this principle been complied with.

In the  
Federal Court  
in Malaysia

No. 24

Notes of Ali,  
F.J.  
21st April  
1970

(continued)

10 Again refers to Ridge v. Baldwin, p. 114 (1963) 2 All E.R. (See page 132 in (1964) A.C.). The three factors of natural justice. The respondent is a minor. Duty of headmaster to bring home the gravity of the situation. Headmaster admits that respondent with a girl was one ground for expulsion. This was not brought to the notice of the respondent - failure to comply with the rules of natural justice.

20 Refers to record, page 106, letter 'C'. Refers to page 104, letter D - an admission by headmaster he did not ask respondent about the incident.

Refers to the affidavit of girl - page 197. Reasonable explanation given by the girl. Incident did not occur at the time he was not yet officiating as headmaster.

Refers to record, page 160 - report on the incident - et seq.

All these have not been put to respondent.

30 Adjourned to 9.30 a.m. tomorrow.

DATO' S.P. SEENIVASAGAM CONTINUES ADDRESS:

22nd April  
1970

Many reports against respondent after 2.4.68. All these had not been put specifically to the respondent clearly because headmaster did not have the reports.

(continued)

Refers to Kanda's case, p. 173 (1962) M.L.J. p. 169. Reads from page 172.

Refers to p. 21 of record. A clear

In the  
Federal Court  
in Malaysia

No. 24

22nd April  
1970

(continued)

admission by Headmaster that he refused to give reason for expulsion.

Refers to page 211.

Refers to letter at page 203.

Refers to letter at page 204. No reply to this letter.

Refers to record, page 105 - decision to expel.

Refers to page 154.

Refers to page 96. Prejudging the issue of guilt. 10

Refers to page 101; page 87. Boy was ill. Confirmed by report at page 149. Date and time of report - 2nd April, 2 p.m.

Submits in the circumstances it is impossible to say that respondent was given an opportunity to be heard.

Refers to Ramesh Chandra Sahu v. N. Pardhy (1959) A.I.R. 90 (Orissa) P.196. Facts somewhat similar to facts of present case. 20

Refers to p. 104 of record. Admits that reports kept confidential.

Refers to page 40, page 98, page 155. Enquiry went on after 2nd April, 1968.

Refers to Prasad v. State of Bihar (1955) A.I.R. (Patna) 372.

Submits no ground to claim privileges in this case. Reports should be made available to respondent to satisfy the requirements of natural justice. 30

Refers to page 20 - enquiry from 2nd to 13th April - evidence of headmaster.

Refers to Wade on Administrative Law (2nd Edition) p. 193.

Reply to points raised by S.G.

(1) Respondent knew charges and had notice. Submits: This had been answered.

Submits the reason for expulsion as admitted by headmaster are there.

If so some of these had not been put to respondent to defend himself against the allegations.

In the  
Federal Court  
in Malaysia

No. 24

22nd April  
1970

(continued)

10 (2) Delay in communication - Submits respondent not complaining of delay. Question of delay relevant only to consideration whether decision to expel was made on 2.4.68 or later.

(3) Allegation of falsity of affidavit by Nadchatiram. Submits affidavit not false.

20 (4) On word "decide". S.G. has suggested that Judge has construed regulation 8 to bring this case within the ambit of Orissa case. Submits no magic in the word "decide". Refers to Fernando's case. Word "satisfied" used in regulation.

(5) Right of enquiry not necessary if the proceedings not *lis inter partes* as contended by Solicitor-General. Submits no authority for the proposition that in such circumstances rule of natural justice does not apply. Refers to De Smith on Judicial Review (2nd Edition) p. 159. S.G. wrong in so submitting.

30 (6) Reply to S.G.'s submission that this is a disciplinary case. Refers to Wade on Administrative Law (2nd Edition) P. 183. Reads from page 182.

Refers to De Smith on Judicial Review (2nd Edition) P. 154.

40 Submits Ex parte Parker's case (1953) 1 W.L.R. 1150, was decided at a time when administrative acts were not seriously challenged and rules of natural justice not seriously considered. But this has been put right in Ridge v. Baldwin.

In the  
Federal Court  
in Malaysia

No. 24  
22nd April  
1970  
(continued)

Refers to S.G.'s written submission.  
Paragraph 20 - formality of procedure  
under reg. 8.

Submits this is not fair when dealing  
with a boy of immature age.

Minister of Education joined simply  
because he had an interest.

On costs, refers to S.G.'s submission  
that allegation of bad faith ground for  
not awarding costs. Refers to Kanda's  
case. Submits not correct to say that  
headmaster not prejudiced. (1943) 2 All  
E.R. 337 - General Medical Council v.  
Spackman.

10

Adjourned for 10 minutes.

Hearing resumes.

SOLICITOR-GENERAL IN REPLY:

Expulsion of pupil does not attract  
principle of audi alteram partem. This  
is based on the understanding of the  
judgment in University of Aston's case  
(1969) 2 All E.R. 973, line D. Concedes  
no decision that principle of audi alteram  
partem does not apply to a school boy.  
But the provisions of Education Act and  
Regulations are clear that respondent is  
not a member of a school as an undergraduate  
of university. Distinguishes Orissa case  
as being limited to the facts of that case.  
There was a contract or undertaking in that  
case.

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Refers to Lloyd's Article - Mordean  
Law Review, Vol. 13, page 281.

Refers to page 22 of record.

Reply to S.G.'s submission on reports.  
Six reports. Though not written on 2.4.68,  
reports did exist.

Re report on respondent being found  
with girl, Headmaster only said this was

111.

one of his main reasons. He did not say it is the only reason. Submits even without this reason he would have decided to expel the respondent.

Respondent aware of his rights. Told Headmaster he would be charged with defamation. Made a report to the police.

No need to give reasons because respondent knew the reasons.

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Judgment reserved.

In the  
Federal Court  
in Malaysia

No. 24

22nd April  
1970

(continued)

No. 25

JUDGMENT OF SUFFIAN, AG. LORD PRESIDENT

Coram: Suffian, Acting Lord President,  
Malaysia;  
Gill, Federal Judge;  
Ali, Federal Judge.

There are two judgments in this case, one by my brother Gill and the other by my brother Ali. I shall ask my brother Gill to read his first and then I shall ask my brother Ali to read his next.

(Gill, F.J., reads his Judgment)

(Ali, F.J., reads his Judgment).

JUDGMENT OF SUFFIAN, Ag. L.P.

I have had the advantage of reading in draft the two Judgments that have just been delivered, and with respect I concur with the Judgment of my brother Gill.

Accordingly the order of the Court is that this appeal be allowed with costs here and below.

Delivered at Kuala Lumpur. (M. Suffian)  
on 12th February 1971 Ag. Lord President,  
Malaysia.

No. 25

Judgment of  
Suffian Ag.  
Lord President  
12th February  
1971

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In the  
Federal Court  
in Malaysia

Arguments in Kuala Lumpur from 20th  
to 22nd April, 1970.

COUNSEL

No. 25  
Judgment of  
Suffian Ag.  
Lord President  
12th February  
1971  
(continued)

Dato' Mohd. Salleh bin  
Abas (Mr. Ajaib Singh  
with him) for appellants  
  
Dato' S.P. Seenivasagam  
(Mr. J. Nadchatiram with  
him) for respondent

No. 26  
Judgment of  
Gill F.J.  
12th February  
1971

No. 26  
Coram: Suffian, Ag. L.P.  
Gill, F.J.  
Ali, F.J.

10

JUDGMENT OF GILL F.J.

This is an appeal from a judgment  
of the High Court at Seremban whereby  
it was declared that the expulsion of the  
respondent, plaintiff in the action, as a  
pupil from King George V School, Seremban  
by the first appellant, first defendant to the  
action, as Headmaster of the said school was  
null and void, and an order made for his  
reinstatement. The second and third  
appellants were joined in the action as  
second and third defendants. 20

The plaintiff's case as contained  
in his statement of claim was that at no  
time was he or his father made aware of any  
charges or accusations or allegations of  
misconduct against him, that neither he nor  
his father was given an opportunity to  
answer any charges or accusations against him,  
that no reasons were given for his expulsion  
from the school, and that in expelling him  
from the school the first defendant had  
acted maliciously, capriciously, wrongfully  
and without any lawful reasons. The  
defence was a denial of each and every  
allegation of fact contained in the statement 30

of claim. The defendant further averred that the plaintiff and his guardian were given ample opportunities to present their appeal to the Board of Governors.

In the  
Federal Court  
in Malaysia

          
No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

10 At the trial of the action there was conflicting evidence as regards the circumstances leading up to the plaintiff's expulsion. The plaintiff's evidence was that on 6th May, 1968, following an announcement by the first defendant in the school hall that a pupil was to be expelled, he was called to the first defendant's office where he was informed that he was being expelled and told to go home. A leaving certificate was subsequently sent to his father. He was not asked to explain anything before he was expelled, and no reason was given to him or to his father for his expulsion.

20 His father appealed against the first defendant's decision to the Board of Governors of the school, but the appeal was rejected and the decision of the first defendant confirmed. Under cross-examination he told a story about the headmaster calling him one day to his office and harassing him, about which he made a report to the Police on 10th April, 1968.

30 The first defendant's evidence was that the plaintiff was expelled from school because of the reports regarding the plaintiff's misbehaviour at a talentime show held in the school on 1st April, 1968. These reports were made to him by the teacher in charge of the show, the head prefect and the chairman of the Interact Club. On 2nd April, 1968 he called the plaintiff and some other boys to his office for the purpose of enquiring into the reports.

40 At first he questioned them together in a group but later interviewed them separately one by one. At his interview with the plaintiff, he asked the plaintiff about his alleged misbehaviour at the talentime show and on previous occasions. The plaintiff denied some of the allegations but admitted some of them. At the end of the interview he was satisfied that it was necessary and



In the  
Federal Court  
in Malaysia

No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

desirable to expel the plaintiff for the purpose of maintaining discipline in the school, but he decided to consult his colleagues in order to countercheck his convictions before making the order of expulsion. Having consulted his colleagues, he fully made up his mind on 10th April, 1968 to expel the plaintiff, but as the school was about to close for the first term holidays and as he had to go to Johore Bahru on official business, he had no time to convey the decision to the plaintiff until the school re-opened on 6th May, 1968.

10

The findings of fact of the learned trial Judge, with which I entirely agree, are set out in his judgment as follows :-

"It is clear from the evidence of D.W.1 that he decided to expel the Plaintiff after the talentime show on 2nd April, 1968, being satisfied that it was necessary to expel the Plaintiff for the purpose of maintaining discipline in the school.

20

I am satisfied that on 2nd April, 1968, D.W.1 had sufficient evidence relating to instances of the Plaintiff's misconduct in his possession to justify him to commence proceedings to expel the Plaintiff. I have carefully considered the evidence given by the Plaintiff and head teacher and I form the impression that the Plaintiff was not telling the truth to this Court when he denied the allegations. On the other hand, I accept the evidence given by D.W.1. I have not the slightest doubt that the allegations of the Plaintiff's misconduct are well-founded. It is apparent from the evidence that the Plaintiff is an intelligent pupil but it is most unfortunate that his conduct has not matched his mental qualities. The reports received by D.W.1 irresistibly show that the Plaintiff was not only irresponsible, arrogant, spoilt and conceited, but

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also inconsiderate and had no respect for authority."

The power of a head teacher of any school to expel a pupil is contained in Regulation 8 of the Education (School Discipline) Regulations, 1959 (L.N.61/1959), which reads as follows :-

"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 be order expel him from such school."

With respect, the effect of regulation 8 is correctly set out by the learned trial Judge in his judgment when he says :-

"Regulation 8 seems to me to require that the head teacher must first be satisfied that the Plaintiff's expulsion is necessary or desirable for the purpose of maintaining discipline or order in the school before he issued the order. It also implies that the head teacher is required to make a decision before issuing the order. Before taking such a decision there must be some process whereby the head teacher can satisfy himself of the pupil's misconduct justifying expulsion."

The learned trial Judge next considered the question as to whether an order made by a head teacher under Regulation 8 may be judicially reviewed. In considering that question he cited the following passage from de Smith on Judicial Review of Administrative Action, 1st Edition, at pages 61-62.

"In considering the scope of judicial review, a further broad distinction must be drawn between ministerial, legislative, and executive or

In the  
Federal Court  
in Malaysia

No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

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In the  
Federal Court  
in Malaysia

No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

administrative powers, on the one hand, and judicial powers, on the others. The validity of the exercise of ministerial, administrative and legislative powers affecting the legal interests of individuals is always open to challenge in the courts, unless judicial review has been excluded, directly or indirectly, by the relevant legislation. If the exercise of the power is predicated on findings of law or fact, the correctness of those findings may be impugned directly or in any appropriate form of collateral proceedings - e.g., by resisting an action or prosecution for enforcement of the order, by bringing an action for a declaration that the order is null and void, or by suing the actor for a civil wrong."

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He then referred to a dictum of R.L. Narasimham C.J. in Ramesh Chandra Sahu v. N. (1) Padhy, Principal, Khallikete College, Berhampur to the effect that it is indeed very difficult to decide whether a particular order is quasi-judicial or administrative, and then reached the conclusion that although the word "decide" is not used in Regulation 8 the effect of the language used seems to support the view that the order of the head teacher is a quasi-judicial order. He then went on to say :-

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"The element of 'decision' which I think is a necessary ingredient when exercising a judicial function may be implied from the language used. Furthermore, the fact that the Regulations also make provision for an appeal against the 'decision' of the head teacher (Regulation 10) tends to strengthen my view that it is a quasi-judicial order."

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(1) A.I.R. (1959) Orissa 196

Again, with respect, I entirely agree.

In the  
Federal Court  
in Malaysia

No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

10 It being agreed that the functions of  
the first defendant under Regulation 8 were  
quasi-judicial and not merely administrative,  
it follows that in the making of an order  
under that Regulation he had to observe the  
rules of natural justice. As to the require-  
ments of natural justice, their Lordships  
of the Privy Council in University of Ceylon (2)  
v. Fernando expressed approval of the follow-  
ing general statement of the law by Harman, J.  
in Byrne v. Kinematograph Renters Society, (3)  
Limited:

20 "What, then, are the require-  
ments of natural justice in a case  
of this kind? First, I think that  
the person accused should know the  
nature of the accusation made;  
secondly, that he should be given  
an opportunity to state his case;  
and, thirdly, of course, that the  
tribunal should act in good faith.  
I do not think that there really  
is anything more."

In Ridge v. Baldwin (4) Lord Hodson said :

30 "No one, I think, disputes that  
three features of natural justice  
stand out - (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 those charges."

40 Taking first the requirement of natural  
justice that a quasi-judicial tribunal  
should be unbiased and should act in good  
faith, it is abundantly clear that the  
first defendant was not actuated by any  
unlawful motive in making the order of  
expulsion against the plaintiff. In this  
connection I need do no more than to repeat  
the conclusions of the learned trial Judge.  
This is what he said :-

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(2) (1960) 1 A.E.R. 631, 638  
(3) (1958) 2 A.E.R. 579, 599  
(4) (1964) A.C.40, 132

In the  
Federal Court  
in Malaysia

          
No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

"It is needless for me to repeat that it is abundantly clear from the evidence that D.W.1 had good reasons for wanting to expel the Plaintiff. In these circumstances, I find that the Plaintiff's allegations that the 1st defendant had acted unlawfully, maliciously, capriciously and without valid reasons are without substance and ill-founded. To my mind, there is no shadow of a doubt as to the honesty and bona fide of the head teacher."

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I need hardly add that the first and fundamental element of natural justice was therefore complied with.

As regards the requirement of natural justice that the person accused should know the nature of the accusations made, the learned Judge took the view that the question before the Court was whether the plaintiff, before the expulsion order was made, acquired adequate notice of his impending expulsion and, if he did, whether an adequate opportunity to explain was accorded to him. With respect, the rules of natural justice did not require that the plaintiff 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. I do not see therefore how it can be argued that this requirement of natural justice was not complied with.

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That brings me to the only other, perhaps the most important, of the requirements of natural justice, namely, that the person accused should be given an opportunity to state his case. That this requirement

of natural justice postulates the holding of some sort of inquiry is beyond question, but there is no universal formula as regards the procedure to be adopted in conducting the inquiry.

In the  
Federal Court  
in Malaysia

No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

10 The right of a person to an inquiry has been defined in varying language in a large number of cases covering a wide field. It was laid down in Board of Education v. Rice (5) that a tribunal holding a quasi-judicial hearing is not bound to treat the inquiry as if it were a judicial trial. That was a case in which the Board of Education was required to dispose of a question which was the subject of an appeal to it. Lord Loreburn L.C. said (p. 182) :-

20 "In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. 30 They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

The above case was cited with approval in Local Government Board v. Arlidge in which Lord Shaw of Dunfermline said (p.138) : (6)

40 "The words 'natural justice' occur in arguments and sometimes in judicial pronouncements in such cases. My Lords, when a central administrative board deals with an appeal from a local

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(5) (1911) A.C. 179

(6) (1915) A.C. 120

In the  
Federal Court  
in Malaysia

No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

authority it must do its best to act justly, and to reach just ends by just means. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means. In regard to these certain ways and methods of judicial procedure may very likely be imitated; and lawyer-like methods may find especial favour from lawyers. But that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation. And the assumption that the methods of natural justice are ex necessitate those of Courts of justice is wholly unfounded. This is expressly applicable to steps of procedure of forms of pleading."

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Lord Parmoor in delivering the judgment of the Privy Council in De Verteuil v. Knaggs(7) said:

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".... Their Lordships are of opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice. It must, however, be borne in mind that there may be special circumstances which would justify a Governor, acting in good faith, to take action even if he did not give an opportunity to the person affected to make any relevant statement, or to correct or controvert any relevant statement brought forward to his prejudice. For instance, a decision may have to be given on any emergency, when promptitude is of

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great importance, or there might be obstructive conduct on the part of the person affected."

In the  
Federal Court  
in Malaysia

Lord Atkin in the case of General Medical Council v. Spackman (8) expressed his view on the subject in these words :-

No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

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"Some analogy exists no doubt between the various procedures of this and other not strictly judicial bodies; but I cannot think that the procedure which may be very just in deciding whether to close a school or an insanitary house is necessarily right in deciding a charge of infamous conduct against a professional man."

Tucker L.J. in Russell v. Duke of Norfolk (9) said something to the same effect in the following words :-

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"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth."

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All the above cases were cited with approval by the Privy Council in University of Ceylon v. Fernando in which Lord Jenkins delivering the judgment of the Board summed up their effect as follows (p.637) :

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"... the question whether the requirements of natural justice have been met by the procedure adopted in any given case must depend to a great extent on the facts and circumstances of the case in point."

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(8) (1943)2 A.E.R.337 , 341

(9) (1949)1 A.E.R.109, 118



In the  
Federal Court  
in Malaysia

          
No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

Lord Reid in *Ridge v. Baldwin* said (p.65);(4)

"... It appears to me that one reason why the authorities on natural justice have been found difficult to reconcile is that insufficient attention has been paid to the great difference between various kinds of cases in which it has been sought to apply the principle."

To my mind, the result of all these judgments is that a quasi-judicial body is free to adopt its own rules of procedure, provided they are fair having regard to the circumstances of the case. This is particularly so when there is no procedure laid down in the relevant provision of law under which the quasi-judicial body is authorised to act. 10

It is clear from the evidence, as I have already said, that specific allegations of misbehaviour at the talentime show and on previous occasions were made against the plaintiff when he was called by the first defendant to the office on 2nd April, 1968. The first defendant stated on oath that he called the plaintiff and two other boys to his office on that day to investigate the validity of the reports which had been made to him regarding the plaintiff's misbehaviour and to decide on what course of action to take. It cannot be denied, therefore, that the first defendant was in fact holding an inquiry into the allegations made against the plaintiff. The allegations or charges or accusations having been made known to the plaintiff, the question which arises is whether he was given an opportunity to state his case. 20 30

The right of a person to be heard before any order is made to his detriment is embodied in the maxim audi alteram partem. Speaking of what Lord Reid said in the House of Lords in *Ridge v. Baldwin* regarding the different categories of cases in which that maxim should apply, Lord Upjohn delivering the judgment of the 40

Privy Council in *Durayappah v. Fernando* (10)  
said :-

In the  
Federal Court  
in Malaysia

No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

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"In that case no attempt was made to give an exhaustive classification of the cases where the principle audi alteram partem should be applied. In their Lordships' opinion it would be wrong to do so. Outside well-known cases such as dismissal from office, deprivation of property and expulsion from clubs, there is a vast area where the principle can only be applied upon most general considerations ..... Outside the well-known classes of cases, no general rule can be laid down as to the application of the general principle in addition to the language of provision. In their Lordships' opinion there are three matters which must always be borne in mind when considering whether the principle should be applied or not. These three matters are: first, what is the nature of the property, the office held, status enjoyed or services to be performed by the complainant of justice. Secondly, in what circumstances or upon what occasions is the person claiming to be entitled to exercise the measure of control entitled to intervene. Thirdly, when a right to intervene is proved, what sanctions in fact is the latter entitled to impose upon the other. It is only upon a consideration of all these matters that the question of the application of the principle can properly be determined."

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In R. v. Senate of the University of Aston the Divisional Court was faced with applications for certiorari and mandamus by two students who had been sent down for failure in examinations and who complained that they had been given no opportunity to make representations before their fate was decided. In fact the various authorities of the University had considered

(10) (1967) 2 A.C. 337, 349

(11) (1969) 2 A.E.R. 964, 973

In the  
Federal Court  
in Malaysia

No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

and reconsidered the matter anxiously in a series of meetings, in the course of which they fully heard the students' explanations. But in law the effective act was the initial decision of the examiners that the students be required to withdraw. This decision was taken without reference to them, and various personal and non-academic circumstances were taken into account. The Divisional Court found that this amounted to a denial of natural justice. But they refused the relief sought, since the students had let over seven months pass before taking legal action, and the prerogative remedies "should not be available to those who sleep upon their rights". Donaldson J. in the course of his judgment in the case said:

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"... Whatever may be the position elsewhere, students at Aston are members of the university and he was being deprived of his membership."

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"In my judgment it is not right to treat the principle of *audi alteram partem* as something divorced from the concept of natural justice, although it will certainly not apply in every case in which there is a right to natural justice. Where, however, it does apply, it is an integral part of natural justice and may indeed lie at its heart."

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As stated in the note on the above case in the 1969 Law Quarterly Review at page 469, the decision that students are in principle entitled to natural justice is yet another example of the courts' insistence that all kinds of persons in authority should respect the fundamentals of fair procedure, and it would seem clear from the authorities that where the person concerned is faced with some sort of charge the maxim audi alteram partem must apply.

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As I have said, what the first defendant was required to do in the observance of the rules of natural justice was to

state the charges against the plaintiff, which he clearly did. There is ample evidence to show that the plaintiff did in fact answer all the charges, which meant that he availed himself of the opportunity given to him to state his case. He admitted some of the charges and denied the others. For example, he admitted occupying a \$3-seat after paying for a \$2-seat and laughing and leaving the hall a few times during the show to cause interruption. The first defendant informed the plaintiff of his misbehaviour with the Prefects' Board, which the plaintiff admitted. He brought to the plaintiff's notice his attitude towards the prefects. To this charge the plaintiff had nothing to say, and he just kept quiet. He was told that when it suited him he brought a medical certificate in order to be absent from afternoon games and yet he was found playing games other than those that he was supposed to play. He admitted running away from school activities, but added by way of explanation that it did not hurt him if he played badminton. Indeed, the only allegations which the plaintiff denied were that he shouted filthy words and flicked matches.

The first defendant stated in evidence that he expelled the plaintiff 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 plaintiff 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 plaintiff prior to his becoming the headmaster of the school on 1st January, 1968, but there is not slightest indication from the evidence that he did this in order to strengthen the case for the plaintiff'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

In the  
Federal Court  
in Malaysia

          
No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

In the  
Federal Court  
in Malaysia

No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

that had the reports which he received from his colleagues been favourable the plaintiff might never have been expelled. The first defendant had received all these reports by 10th April, 1968, and his evidence is that mentally he expelled the plaintiff on the same day, so that the giving of his decision on 6th May, 1968 amounted to nothing more than the promulgation of a decision already made.

It was contended on behalf of the plaintiff in the court below, and this in fact is the main contention in support of the judgment appealed from, that he should have been called upon to show cause why he should not be expelled. In other words, the contention is that the first defendant, having held one inquiry on 2nd April, 1968 to satisfy himself of the truth or falsity of the allegations against the plaintiff on the basis of which he might make an order for the plaintiff's expulsion, should have gone on to hold another inquiry merely to enable the plaintiff to show cause why he should not be expelled. I do not agree with that contention. On the basis of the plaintiff's admission of a number of allegations against him, to which I have referred earlier in my judgment, it was open to the first defendant to hold himself satisfied that it was necessary or desirable for the purpose of maintaining discipline or order in the school to expel the plaintiff. The fact that the first defendant consulted with his colleagues before making the order did not, in my view, in itself involve any violation of the requirements of natural justice. I say this in view of the first defendant's evidence that he decided on 10th April, or even earlier on 2nd April, that the plaintiff should be expelled, but that he executed that decision after he came back from Johore Bahru.

To sum up, as Regulation 8, which invested the first defendant with a quasi-judicial function here in question, prescribes no special form of procedure, it was for him to determine the procedure to be followed as he thought best, subject

to the obvious implication that some form of inquiry was to be held, such as would enable him fairly to determine whether he should hold himself satisfied that the allegations against the plaintiff had been made out, and that he had to do his best to act justly and to reach just ends by just means. It is clear that the first defendant did hold some sort of inquiry on 2nd April, 1968 and that at this inquiry he gave the plaintiff every opportunity to defend himself. The Plaintiff admitted some of the accusations, on the basis of which it was open to the first defendant to make the order of expulsion. For the maintenance of discipline and order in any school a head teacher cannot be expected to hold an elaborate inquiry before making an order. In my judgment, a school comes under the category of that vast area where the principle of audi-alteram partem can only be applied upon most general considerations, as stated by the Privy Council in Duravappah v. Fernando. I would conclude by saying that in my opinion the first defendant acted justly and reached just ends by just means in making the order of expulsion against the plaintiff.

I would allow the appeal and set aside the order made in the court below. The appellants are to have their costs of this appeal and in the High Court.

Kuala Lumpur,  
12th February 1971

S.S. GILL  
(S.S. Gill)  
JUDGE  
Federal Court.

Dato Mohd Salleh bin  
Abas with Inche Ajaib Singh for appellants

Dato S.P. Seenivasagam  
with Inche J.Nadchatiram for respondent

In the  
Federal Court  
in Malaysia

No. 26

Judgment of  
Gill F.J.  
12th February  
1971

(continued)

In the  
Federal Court  
in Malaysia

No. 27

Judgment of Ali  
F.J.  
12th February  
1971

Coram: Suffian, Ag. L.P.  
Gill, F.J.  
Ali, F.J.

JUDGMENT OF ALI, F.J.

The Respondent, a minor, was expelled from his school, the King George V School, Seremban, by the Head Teacher, the first appellant, exercising power conferred by regulation 8 of Education (School Discipline) Regulations 1959. The regulation provides:

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"8. 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; or

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(b) that any pupil has contravened the provisions of regulation 7, he may by order suspend such pupil from attendance at such school for such period as he may think fit, or expel him from such school."

The respondent or his father promptly but unsuccessfully appealed to the Board of Governors under regulation 10. He could have taken the matter further to the Minister but he did not do so. Instead he sued the head teacher, the Board of Governors as well as the Minister of Education for a declaration that the expulsion was null and void and of no effect. As consequential reliefs, he prayed for an order of re-instatement and also claimed damages. He succeeded in obtaining the declaration as well as an order re-instating him as a pupil of the school, but his claim for damages failed. From the written judgment the learned trial Judge seems

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satisfied that the respondent was not given an opportunity to be heard in his defence before he was expelled. Thereupon he concluded that there has been a breach of the principle of natural justice. If the matter had come to the Court by way of a motion for an order of certiorari the declaration made would have the effect of an order quashing the decision of the head teacher and was sufficient to enable the respondent to be re-admitted as a pupil of the school. So far as the order of re-instatement is now a ground of appeal, I shall dispose of it in a few words. I agree with the appellants that the trial Court ought not to have made the order. But on record it would appear that at the time when this appeal came for hearing before us, the respondent has virtually left the school and was only waiting to enter a university. He was able to return to the school, despite his expulsion, because of a consent order made by S.M. Yong, J. in July, 1968. In the event the point taken by the appellants can only be of academic interest. The order of re-instatement, even if set aside, will not adversely affect the respondent.

The substantial dispute, here and below, is whether the respondent was given an opportunity to be heard in his defence before he was expelled. That seems clear from the pleadings and from the evidence at the trial. In coming to the conclusion that the respondent was not given a fair opportunity, the learned trial Judge had, presumably, considered the evidence of the respondent himself and that of the head teacher, the 1st appellant. The facts established, so far as these were not in dispute, are as follows :

On May 6, 1968, the head teacher informed the respondent that he was expelled from the school. He was not told of the reasons for his expulsion. His father and his solicitors wrote asking for the reasons in order to formulate their grounds of appeal to the Board of

In the  
Federal Court  
in Malaysia

          
No. 27

Judgment of Ali  
F.J.  
12th February  
1971

(continued)



In the  
Federal Court  
in Malaysia

          
No. 27

Judgment of Ali  
F.J.  
12th February  
1971

(continued)

Governors. They were unsuccessful. After hearing the appeal the Board informed the respondent's father by a letter on June 1, 1968 confirming the head teacher's decision. Thirteen days later he commenced the action in this appeal.

Broadly stated, the respondent's case rested on two main grounds, namely -

- (a) the head teacher had acted maliciously, capriciously, wrongfully and without any lawful reasons. (See paragraph 9 of the statement of claim - page 10 of the Record). 10
- (b) both the head teacher and the Board of Governors acted unlawfully and against the rules of natural justice. (See paragraph 11 of the statement of claim - page 10 of the Record).

The learned trial Judge rejected (a) saying :- 20

"It is needless for me to repeat that it is abundantly clear from the evidence that D.W.1 had good reasons for wanting to expel the Plaintiff. In these circumstances, I find that the Plaintiff's allegations that the 1st Defendant had acted unlawfully, maliciously, capriciously and without valid reasons are without substance and ill-founded. To my mind, there is no shadow of a doubt as to the honesty and bona fide of the head teacher." 30

Inasmuch as there is no cross appeal by the respondent against this finding, I need say no more about it. But as regards (b), the learned trial Judge, as stated earlier, found that the respondent was not given a fair opportunity to be heard. It was a finding based on the evidence and on the view taken of the law relating to natural justice. In the light of the arguments addressed to the court, I consider it of the utmost importance 40

10 that there should be a clear understanding of the written judgment. Without this it will be extremely difficult to say whether or not the learned trial Judge has applied the legal principles correctly. I have endeavoured to the best of my ability to adopt this line of approach and in so doing have come to the view that the judgment of the trial court should be upheld as reasonable so far as it was founded on evidence and that the learned trial Judge has applied the legal principles correctly.

In the  
Federal Court  
in Malaysia

          
No. 27

Judgment of Ali  
F.J.  
12th February  
1971

(continued)

On the issue whether or not the respondent was given a fair opportunity to be heard, the dispute turned solely on the interview at the head teacher's office on April 2, 1968. The respondent's evidence of the interview was :

20 "The Headmaster accused me of misbehaving at the talentime show. He first accused me, then started scolding. There was no other charge or accusation levelled against me on that day. The Headmaster never advised me. He only said that 'at the rate you are going on, one of these days you'll find this knife stabbed at your back.'  
I was scared."

30 Shortly put, the respondent thus clearly admitted that the report of misconduct at the talentime show was put to him in some details and that he was given a fair opportunity to explain. But as far as he was concerned no other charge of misconduct was put to him on that day. The head teacher swore to the contrary. He said besides the talentime show  
40 report he also put to the respondent various other reports of misconduct. The manner in which he put to them was described in these words:

"I informed the plaintiff of his misbehaviour with the Prefects' Board and plaintiff admitted. I also brought to his notice his

In the  
Federal Court  
in Malaysia

No. 27

Judgment of Ali  
F.J.  
12th February  
1971

(continued)

attitude towards the Prefect and he had nothing to say about it. Plaintiff just kept quiet. I also told him that when it suits him he brought a medical certificate in order to be absent from afternoon games, and yet he was found playing games other than he was supposed to play. It was not really a medical certificate but a letter from the father saying he was ill. I told him that he was running away from school activities. He admitted but said that the pain does not hurt him if he plays badminton. I also told him that as a pupil his primary task was to develop wholesome habits in the academic and extra-curricular fields, and reports of his academic progress from his teachers were far from satisfactory. He denied it. I meant not up to the mark when I said far from satisfactory. I showed him certain remarks - remarks written by teachers in his own books which I initialled myself. The remarks were that he was far from satisfactory and a bad influence in the class."

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Later on he said :-

"I took into consideration all these before I came to my decision. Before I came to my decision I both discussed and explored my convictions. By that time a number of reports were made against the plaintiff."

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Further in paragraph 7 of his affidavit affirmed on July 4, 1968 he referred to the interview on April 2, stating :-

...."I considered taking expulsion action against the Plaintiff. With that in view I consulted my Senior Teachers and the form teacher who were all of the view that in view of the Plaintiff's extremely bad conduct and character he should be expelled. After several discussions and receiving all verbal reports

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from the form teacher I decided to expel the Plaintiff. This decision was taken by me on the 10th April, 1968."

In the  
Federal Court  
in Malaysia

No. 27

Judgment of Ali  
F.J.  
12th February  
1971

(continued)

But to questions in cross-examination he gave a weak reply in these words :-

10 "I did not tell the plaintiff that 'these are the charges, and unless you have a satisfactory explanation I am going to expel you'. I did say to the plaintiff that I will probably expel or take action - something to that effect."

On the evidence such as it was, the learned trial Judge concluded in these words :-

20 "In the light of the principles laid down in the cases cited above, I am satisfied that in the circumstances of the present case a mere warning by D.W.1 that the Plaintiff may probably be expelled fall short of the requirements of natural justice. D.W.1, in my opinion, omitted to provide adequate notice to the Plaintiff to enable him to truly appreciate the exact nature and purpose of the proceedings when he interviewed the Plaintiff at his office on 2nd April, 1968. In my view, such omission had  
30 the necessary effect of depriving the Plaintiff of a fair opportunity of being heard."

40 The appellants are now saying that this conclusion proceeded on an erroneous view of the principle of natural justice. It is not easy to discover the true basis of the complaint from the memorandum of appeal for there it is merely stated that there was sufficient compliance with the principle of natural justice. But upon reading the learned Solicitor-General's written submission, it became clear to me that certain passages from the written judgment were being criticised as expressing an erroneous view of the law. In

In the  
Federal Court  
in Malaysia

No. 27

Judgment of Ali  
F.J.  
12th February  
1971

(continued)

paragraph 3 on page 8 of the written submission the grounds of appeal were enlarged in these terms :-

"The learned Judge should have held that the requirements of natural justice have been fully complied with. None of the cases on natural justice has ever gone so far as to require that the Respondent must be told that he would be expelled unless he explained. Further, none of these cases has ever gone so far as to say that natural justice can only be complied with by holding an inquiry as if it is a formal trial."

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This statement, I think, was largely prompted by certain passages appearing in the judgment of the learned trial Judge. One passage reads :-

"I am satisfied that on 2nd April, 1968, D.W.1 had sufficient evidence relating to instances of the Plaintiff's misconduct in his possession to justify him to commence proceedings to expel the Plaintiff. I have carefully considered the evidence given by the Plaintiff and head teacher and I form the impression that the Plaintiff was not telling the truth to this court when he denied the allegations. On the other hand, I accept the evidence given by D.W.1. I have not the slightest doubt that the allegations of the Plaintiff's misconduct are well-founded. It is apparent from the evidence that the Plaintiff is an intelligent pupil but it is most unfortunate that his conduct has not matched his mental qualities. The reports received by D.W.1 irresistibly show that the Plaintiff was not only irresponsible, arrogant, spoilt and conceited, but also inconsiderate and had no respect for authority."

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Another reads as follows :-

"It is needless for me to repeat that it is abundantly clear from the evidence that D.W.1 had good reasons for wanting to expel the Plaintiff. In these circumstances, I find that the Plaintiff's allegations that the 1st Defendant had acted unlawfully, maliciously, capriciously and without valid reasons are without substance and ill-founded. To my mind, there is no shadow of a doubt as to the honesty and bona fide of the head teacher.

In the  
Federal Court  
in Malaysia

No. 27

Judgment of Ali  
F.J.  
12th February  
1971

(continued)

The question before the Court is whether the Plaintiff, before the expulsion order was issued, acquired adequate notice of his impending expulsion and, if he did, whether an adequate opportunity to explain was accorded him. In short, whether D.W.1 before arriving at a decision to expel the plaintiff did apply some form of procedure in compliance with the rules of natural justice."

Having said all these, he made the following finding of facts :-

...."In any event, it is, I think, abundantly clear that at no time did D.W.1 give any definite intimation or warning to the Plaintiff during the interview on 2nd April, 1968, that he was going to be "expelled unless he could give an explanation. He could not in the circumstances have done so since at that time no definite action was contemplated by D.W.1. D.W.1 admitted in the affidavit on page 18 of Ex. P1 that he only decided the expulsion after several discussions and receiving verbal reports from the form teacher."

I would summarise the passages thus referred to in this way. Though satisfied that there might be valid grounds for the respondent's expulsion, the learned trial Judge was not satisfied that the respondent was given a fair

In the  
Federal Court  
in Malaysia

No. 27

Judgment of Ali  
F.J.  
12th February  
1971

(continued)

opportunity to exculpate himself or to prove his innocence. The reason given was that on April 2, 1968 the respondent was not told in definite terms that he was before the head teacher in an enquiry to consider his expulsion from the school. Perhaps it is true that no case on natural justice has ever gone so far as to require the head teacher to inform the respondent the purpose of the enquiry. But, as pointed out by Lord Reid in Ridge v. Baldwin(1) & Others cases on natural justice are not easy to reconcile inasmuch as they were concerned with different kinds of situations. What a minister ought to do in considering objections to a scheme may be very different from what a watch committee ought to do in considering whether or not to dismiss a chief constable. Likewise, it can be said that what a police commissioner ought to do in considering the revocation of a taxi driver's licence as in the case of Regina v. Metropolitan Police Commissioner Ex parte Parker (2) may well be different from what a head teacher of a school ought to do in considering the expulsion of a pupil under a regulation 8 of Education (School Discipline) Regulations 1959. I mention this merely to illustrate the difficulty which sometimes arises from an attempt to extend the words of a particular judgment in a decided case to the circumstances of another case. Lord Reid in Ridge v. Baldwin (supra) realised such difficulty when he said on page 64 :-

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...."The authorities on the applicability of the principles of natural justice are in some confusion, and so I find it necessary to examine this matter in some detail. The principle audi alteram partem goes back many centuries in our law and appears in a multitude of judgments of judges of the highest authority. In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless .....

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(1) (1964) A.C.40 (2) (1953) Vol.1,W.L.R.1150

It appears to me that one reason why the authorities on natural justice have been found difficult to reconcile is that insufficient attention has been paid to the great difference between various kinds of cases in which it has been sought to apply the principle."

In the  
Federal Court  
in Malaysia

No. 27

Judgment of Ali  
F.J.

12th February  
1971

(continued)

10 The present case is no different from those referred to by Lord Reid for the difficulty, if at all there is any, would really lie in the application of the principle audi alteram partem to the facts of this case. Fortunately, however, the dispute here raises no difficulty in understanding the issue between the parties. I have already referred to the issue. So far as the trial court's decision on the issue was in favour of the respondent the

20 appellants have the unenviable task of challenging it on the ground that it was unreasonable having regard to the evidence. In other words, it must be shown that the finding of fact was against the weight of evidence. In my judgment whatever view is to be taken of the evidence the inescapable conclusion would be that no proper or fair opportunity was given to the respondent to prove his innocence.

30 If the respondent did not know that he was going to be expelled it is reasonable to infer that he could not possibly know the significance of giving any explanation to avoid expulsion. The head teacher's evidence carefully examined disclosed nothing more than a severe reprimand or a warning that the respondent would find himself in trouble if he persisted in behaving the way he was reported to have

40 behaved in the past. The expulsion announced on May 6, 1968 surprised the respondent as, indeed, it must. If he had known earlier, positive steps would have been taken for his father and other members of his family are persons who would use every means at their disposal to fight the expulsion. As it were nothing positive was done until after May 6. For reasons already stated, I would dismiss this appeal.



In the  
Federal Court  
in Malaysia

No. 27

Judgment of Ali  
F.J.  
12th February  
1971

(continued)

I have so far avoided making detailed references to the cases cited by the learned trial Judge or by the learned Solicitor-General. The main reason, as indicated earlier, is to avoid saying anything which may cause confusion or difficulty in understanding the consideration of the principle involved. This principle so far as it seems relevant to this appeal is best expressed in the words of Lord Reid in Ridge v. Baldwin & Ors. (supra). On page 80 it is stated thus :-

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...."The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case."

It is also to be found in the judgment of Viscount Haldane, L.C. in Local Government Board v. Arlidge on page 132 as follows :-

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...."I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In Board of Education v. Rice he laid down that, in disposing (4) of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The Board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view."

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(The underlining is mine)

(3) (1915) A.C.120

(4) (1911) A.C.179

The passage just quoted was also referred to by Lord Jenkins in his judgment in the University of Ceylon v. Fernando. See (5) particularly the judgment on page 638. From these passages it would appear to me that any opportunity given to a person affected must be fair or proper opportunity as otherwise it cannot come within the rule of natural justice. It was this more than anything else which led the trial court to conclude that there has been a violation of the principle audi alteram partem.

In the  
Federal Court  
in Malaysia

                      
No. 27

Judgment of Ali  
F.J.  
12th February  
1971

(continued)

In the course of the arguments before us, it was also urged on behalf of the appellants that the principle audi alteram partem need not, in the circumstances of the present case, be applied. I recall this as having been said by the learned Solicitor-General more than once. I also recall as having been said that this was a new point or a novel proposition of law. Such as it was, it is not surprising that authority on the point is difficult to find. However, the arguments proceeded on the basis that unlike a university student, a pupil of a school has no right. It was said that he has no right under the Education Act. If this was a reason for the view that the principle audi alteram partem is inapplicable, I cannot, with respect, accept it as sound. The right to be heard in one's defence is a common law right unrelated to any other rights. Since the judgment of Lord Reid in Ridge v. Baldwin & Ors. (supra), there is, at least, some doubt whether the principle audi alteram partem applied only when a tribunal making a decision is performing a judicial or quasi-judicial function. In the Law Report dated March 23, 1970 Lord Denning was reported to have said in the Court of Appeal in the case of Regina v. Gaming Board for Great Britain, Ex Parte Benaim and Khaida this:-

"At one time it was said that the principles only applied to judicial and not to administrative proceedings; but that was not accepted in Ridge v. Baldwin (1964 A.C.40).

In the  
Federal Court  
in Malaysia

No. 27

Judgment of Ali  
F.J.  
12th February  
1971

(continued)

At another time they were said not to apply to the grant or refusal of licences, but speeches in the Ridge case showed that that, too, was now wrong."

In the same case Lord Denning also referred to Lord Parker in Re H.K. (an Infant) as (6) having said on page 630 :-

"Even if an immigration officer is not in a judicial or quasi-judicial capacity, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the subsection, and for that purpose let the immigrant know what his immediate impression is so that the immigrant can disabuse him. That is not a question of acting or being required to act judicially, but of being required to act fairly."

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The trend of modern decisions, as it seems to me, would negative the suggestion that as a condition precedent to its applicability it must be established that the respondent has some right before the principle *audi alteram partem* can be applied. In the course of his arguments the learned Solicitor-General has referred to the case of Regina v. Senate of the University of Aston, Ex Parte Roffey and Another, (7) apparently, in support of his proposition. As I understand the judgment in the case, Donaldson J. clearly rejected as submission somewhat similar to the one before us. Admittedly in that case relief was refused but this was because the person seeking relief was found to have slept on his right far too long to justify interference; and interference is, of course, a matter within the discretionary power of the Court.

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(6) (1967) 2 Q.B. 617

(7) (1969) 2 A.E.R. 964

10 Finally, I come to the question of costs. As may be noticed, the respondent had proceeded by way of an action for a declaration. This in itself may not be objectionable. But he also claimed damage which was rightly dismissed by the trial court. But the reason which leads me to the view that he should not get costs altogether is because he failed to exhaust the remedies open to him under the law before coming to Court. After the rejection of his appeal by the Board of Governors, he could or should have appealed further to the Minister. He had the right to do this under regulation 10. On record he did not appear to have done so and I regard this as a serious omission. Successful though he may be in this appeal, he cannot have costs here or below.

20 There will be no order as to costs.

(Ali bin Hassan)  
Judge,  
Federal Court, Malaysia.

Kuala Lumpur,  
12th February, 1971.

Dato' Mohd. Salleh bin  
Abas, Solicitor-General  
(Enche Ajaib Singh with  
him)

for appellants

30 Dato' S.P. Seenivasagam  
(Enche J. Nadchatiram  
with him)

for respondent

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In the  
Federal Court  
in Malaysia

          
No. 27

Judgment of Ali  
F.J.  
12th February  
1971

(continued)

142.

No. 28

In the  
Federal Court  
in Malaysia

ORDER OF THE FEDERAL COURT

No. 28

Order of the  
Federal Court  
12th February  
1971

Coram: Suffian, Judge, Federal Court,  
Malaysia.  
Gill, Judge, Federal Court,  
Malaysia.  
Ali, Judge, Federal Court,  
Malaysia.

IN OPEN COURT

THIS 12TH DAY OF FEBRUARY 1971

10

O R D E R

THIS APPEAL coming for hearing on the  
20th, 21st and 22nd day of April, 1970 in  
the presence of Dato Mohd. Salleh bin  
Abas, Solicitor-General, Malaysia (Mr. Ajaib  
Singh with him) for the Appellants above-  
named and Dato S.P. Seenivasagam (Mr. J.  
Nadchatiram with him) of Counsel for the  
Respondent abovenamed AND UPON READING the  
Record of Appeal herein AND UPON HEARING  
the Solicitor-General and Counsel for the  
Respondent as aforesaid:

20

IT WAS ORDERED that this Appeal do  
stand adjourned for Judgment AND the same  
coming for Judgment this day in the presence  
of Inche Abdullah bin Ngah, Senior Federal  
Counsel on behalf of the Appellants and  
Mr. J.Nadchatiram of Counsel for the Res-  
pondent.

IT IS ORDERED that this Appeal be and  
is hereby allowed AND IT IS ORDERED that  
the Respondent do pay to Appellants the  
costs of this Appeal and the costs in the  
Court below.

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GIVEN under my hand and the seal of  
the Court this 12th day of February, 1971.

Sd:           ?  
DEPUTY REGISTRAR  
FEDERAL COURT, MALAYSIA  
KUALA LUMPUR.  
12.6.71.

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NOTICE OF MOTION

In the  
Federal Court  
in Malaysia

No. 29

Notice of Motion  
9th March 1971

IN THE FEDERAL COURT OF MALAYSIA  
HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO.X95 of 1969

Between

- 10
- 1. K.Anandarajan, (Headmaster) )  
King George V School, )  
Seremban. )
  - 2. The Minister for Education, )  
Malaysia. )
  - 3. Board of Governors, )  
King George V School, )  
Seremban. )
- Appellants

And

N.Mahadevan (an infant)  
suing by his father and  
next friend M. Nadchatiram

Respondent

20

(In the matter of Civil Suit No.101  
of 1968 in the High Court in  
Malaya at Seremban.

Between

N. Mahadevan (an infant)  
suing by his father and  
next friend M.Nadchatiram

Plaintiff

And

- 30
- 1. K.Anandarajan, (Headmaster)  
King George V School,  
Seremban.
  - 2. The Minister for Education,  
Malaysia.
  - 3. Board of Governors,  
King George V School,  
Seremban.
- Defendants

In the  
Federal Court  
in Malaysia

No. 29

Notice of Motion  
9th March 1971

(continued)

NOTICE OF MOTION

TAKE NOTICE that this Honourable Court will be moved on Monday the 22nd day of March, 1971 at 9.30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Counsel for the Respondent abovenamed for an Order that:-

- (1) Conditional leave be granted to the Respondent abovenamed to appeal to His Majesty The Yang Di-Pertuan Agong against the Order and Judgment of this Honourable Court given on the 12th day of February, 1971 allowing with costs the appeal in the above Civil Appeal No.X 95 of 1969 and setting aside the Order made by the Seremban High Court on the 5th day of September 1969 in Seremban High Court Civil Suit No. 101 of 1968. 10 20
- (2) Execution of the said Judgment may be suspended pending the appeal.
- (3) The costs of this Application be costs in the cause.

Dated this 4th day of March, 1971.

Sd: Saraswathy Devi & Co.  
Solicitors for the Respondent

Dated at Kuala Lumpur this 9th day of March, 1971. 30

Sd: ?  
Deputy Registrar  
Federal Court, Malaysia,  
Kuala Lumpur.

To:

1. The Chief Registrar,  
Federal Court,  
Kuala Lumpur.
2. K.Anandarajan (Headmaster),  
King George V School,  
Seremban. 40





In the  
Federal Court  
in Malaysia

No. 30

Affidavit of  
M.Nadchatiram  
4th March 1971  
(continued)

pupil in the said School and that the Appellants do pay to the Plaintiff the taxed costs on the lower scale to the Respondent.

3. I am desirous of appealing to His Majesty The Yang Di-Pertuan Agong from the said Judgment of this Honourable Court.
4. The said Judgment of this Honourable Court is a final Judgment or order in a civil matter. 10
5. It is respectfully submitted that the matter in dispute in the appeal is of the value of five thousand dollars or upwards or involves directly or indirectly a question respecting a civil right of the value of five thousand dollars or upwards.
6. The subject matter or right involved is, inter alia, the right of the Respondent to complete his education in the said School and thereafter proceed to higher education and also his right not to be deprived of this except as by law provided and with due observance of the principles of natural justice. 20
7. The case is from its nature a fit one for appeal as it involves, inter alia, decision as to :- 30
  - (a) The extent of and the manner in which the principles of natural justice are applicable and exercised in the circumstances of this case.
  - (b) Whether on the facts of this case the requirements of the principles of natural justice had been complied with.
  - (c) To what extent this Honourable Court was justified in interfering with findings of fact by the High 40

Court that the requirements of natural justice had not been complied with and other questions of fact in relation thereto.

In the  
Federal Court  
in Malaysia

          
No. 30

Affidavit of  
M.Nadchatiram  
4th March 1971

(continued)

8. I am advised and verily believe that there are other good and valued grounds of appeal in that, inter alia,

10

(i) That the Appellant No.1 had admitted that one of the main reasons for the expulsion of the Respondent was the alleged incident relating to the girl but that he never gave an opportunity to the Respondent to explain this.

20

(ii) That even at my written request I was not given the grounds on which the Respondent was expelled and I was not, therefore, in a position to appeal or defend my son the Respondent who was a minor.

(iii) That the High Court at Seremban had found as a fact that the Respondent had not been given fair opportunity to defend himself and this finding of fact ought not to have been interfered with.

30

(iv) That the issue in this case was not whether there were sufficient grounds for expulsion but whether the Respondent had sufficient notice and a fair opportunity to defend himself.

(v) That the Appellant had admitted that even after the expulsion order neither the Respondent nor I were aware of the charges against the Respondent.

40

9. There was no concurrent finding by the Court of first instance and by this Honourable Court. The appeal was allowed by this Honourable Court by a majority decision of two to one.

In the  
Federal Court  
in Malaysia

No. 30

Affidavit of  
M.Nadchatiram  
4th March 1971

(continued)

I am willing to undertake as a condition for leave to appeal to enter unto good and sufficient security to the satisfaction of this Court in such sum as this Court may duly prescribe and to conform to any other conditions as may be duly imposed.

11. I pray that this Honourable Court may be pleased to grant the Respondent leave to appeal to His Majesty The Yang Di-Pertuan Agong. 10

Affirmed by the abovenamed )  
M.Nadchatiram at Seremban )  
this 4th day of March 1971 ) Sd:  
at 9.00 a.m. ) M.Nadchatiram

Before me,

Sd. Hj. Hussain bin Meon  
Commissioner for Oaths.

This Affidavit is filed by Messrs. Saraswathy Devi & Co., Solicitors for the Respondent, whose address for service is at No.9 Cameron Street, Seremban. 20

No. 31

Order Granting  
Conditional  
Leave to Appeal  
to His Majesty  
The Yang Di-  
Pertuan Agong  
22nd March 1971

No. 31

ORDER GRANTING CONDITIONAL LEAVE  
TO APPEAL TO HIS MAJESTY THE YANG  
DI-PERTUAN AGONG

Coram: Ong, Chief Justice, High Court in Malaya. 30  
Gill, Judge, Federal Court, Malaysia.  
Ali, Judge, Federal Court, Malaysia.

IN OPEN COURT  
THIS 22ND DAY  
OF MARCH, 1971

O R D E R

UPON MOTION made unto Court this day by Dato S.P. Seenivasagam (Mr.J.Nadchatiram with him) of Counsel for the Respondent abovenamed in the presence of Mr. Ajaib Singh, Senior Federal Counsel for the Appellants abovenamed AND UPON READING the Notice of Motion dated the 4th day of March, 1971 and the Affidavit of M. Nadchatiram affirmed the 4th day of March, 1971 and filed herein AND UPON HEARING Counsel for the Respondent and the Senior Federal Counsel as aforesaid IT IS ORDERED that leave be and is hereby granted to the Respondent abovenamed to appeal to his Majesty the Yang di-Pertuan Agong against the Order and Judgment of this Honourable Court given on the 12th day of February, 1971 upon the following conditions :-

- (a) That the Respondent abovenamed do within three months from the date hereof deposit into Court a sum of \$5,000.00 (Dollars Five Thousand only) or enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia in the said sum of \$5,000.00 for the due prosecution of the appeal to His Majesty the Yang di-Pertuan Agong and the payment of all such costs as may become payable to the Appellants abovenamed in the event of the Respondent abovenamed not obtaining an Order granting him final leave to appeal or of His Majesty the Yang di-Pertuan Agong ordering the Respondent to pay to the Appellants abovenamed the costs of the Appeal as the case may be; and
- (b) that the Respondent do within the said period of three months from the date hereof take the necessary steps for the purpose of procuring the preparation of the Record and for the despatch thereof to England:

In the  
Federal Court  
in Malaysia

No. 31

Order Granting  
Conditional  
Leave to Appeal  
to His Majesty  
The Yang Di-  
Pertuan Agong  
22nd March 1971

(continued)

In the  
Federal Court  
in Malaysia

No. 31

Order Granting  
Conditional  
Leave to Appeal  
to His Majesty  
The Yang Di-  
Pertuan Agong  
22nd March 1971  
(continued)

AND IT IS ORDERED that Execution of the said  
Judgment be stayed pending the appeal AND  
IT IS LASTLY ORDERED that the costs of  
this Application be costs in the cause.

GIVEN under my hand and the Seal of  
the Court this 22nd day of March, 1971

Sd:           ?  
DEPUTY REGISTRAR,  
FEDERAL COURT,  
MALAYSIA.

10

No. 32

Order Granting  
Final Leave to  
Appeal to His  
Majesty The  
Yang Di-Pertuan  
Agong  
7th July 1971

No. 32

ORDER GRANTING FINAL LEAVE TO  
APPEAL TO HIS MAJESTY THE YANG  
DI-PERTUAN AGONG

IN THE FEDERAL COURT OF MALAYSIA  
HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. X95 OF 1969

Between

- |   |   |            |
|---|---|------------|
| 1. K. Anandarajan, Headmaster<br>King George v School,<br>Seremban. | } | 20         |
| 2. The Minister for Education,<br>Malaysia.                         |   |            |
| 3. Board of Governors,<br>King George V School,<br>Seremban.        |   |            |
|   | ) | Appellants |

And

- |   |            |    |
|---|------------|----|
| N. Mahadevan (an infant)<br>suing by his father and<br>next friend M. Nadchatiram | Respondent | 30 |
|---|------------|----|

(In the matter or Civil Suit No. 101  
of 1968 in the High Court in Malaya  
at Seremban

In the  
Federal Court  
in Malaysia

Between

No. 32

N. Mahadevan (an infant)  
suing by his father and  
next friend M. Nadchatiram      Plaintiff

Order Granting  
Final Leave to  
Appeal to His  
Majesty The  
Yang Di-Pertuan  
Agong  
7th July 1971  
(continued)

And

- 10      1. K. Anandarajan, Headmaster  
          King George V School,  
          Seremban.
2. The Minister for Education,  
          Malaysia.
3. Board of Governors,  
          King George V School,  
          Seremban.                      Defendants

20      Coram:      Azmi, Lord President, Federal  
                  Court, Malaysia.  
                  Suffian, Judge, Federal Court,  
                  Malaysia.  
                  Ali, Judge, Federal Court,  
                  Malaysia.

  IN OPEN COURT  
THIS 7TH DAY OF JULY, 1971.

O R D E R

30      UPON MOTION made unto Court this day  
          by Mr. J. Nadchatiram of Counsel for the  
          Respondent abovenamed in the presence of  
          Enche Abdul Razak bin Dato' Abu Samah,  
          Senior Federal Counsel for the Appellants  
          abovenamed AND UPON READING the Notice of  
          Motion dated the 23rd day of June, 1971  
          and the Affidavit of M. Nadchatiram affirmed  
          the 22nd day of June, 1971 and filed herein  
          AND UPON HEARING Counsel for the Respondent  
          and the Senior Federal Counsel as aforesaid  
          IT IS ORDERED that final leave be and is  
          hereby granted to the Respondent abovenamed  
40      to appeal to His Majesty the Yang Di-Pertuan  
          Agong against the Order and Judgment of this

In the  
Federal Court  
in Malaysia

No. 32

Order Granting  
Final Leave to  
Appeal to His  
Majesty The  
Yang Di-Pertuan  
Agong  
7th July 1971  
(continued)

Honourable Court given on the 12th day of  
February, 1971 AND IT IS FURTHER ORDERED  
that the costs of and incidental to this  
application be costs in the cause.

GIVEN under my Hand and the Seal of  
the Court this 7th day of July, 1971.

Sd.

DEPUTY REGISTRAR  
FEDERAL COURT  
MALAYSIA.

10

Exhibits

Exhibit P1  
Agreed Bundle.

Affidavit of  
M.Nadchatiram  
13th June 1968

EXHIBITS

EXHIBIT P1

AGREED BUNDLE OF DOCUMENTS AND LETTERS

FEDERATION OF MALAYSIA  
IN THE STATE OF NEGRI SEMBILAN  
IN THE HIGH COURT IN MALAYA AT SEREMBAN  
CIVIL SUIT NO. 101 of 1968

Between

N. Mahadevan (an infant)  
suing by his father and  
next friend M. Nadchatiram                      Plaintiff

20

And

1. K. Anandarajan, (Headmaster)  
King George V School,  
Seremban.
2. The Minister for Education,  
Malaysia.
3. Board of Governors,  
King George V School,  
Seremban.    Defendants

30

AFFIDAVIT

I, M. NADCHATIRAM, a business man, of

Malaysian Nationality, and residing at No.1, Jalan Atas, Seremban, make affirmation and say as follows :-

Exhibits  
Exhibit P1  
Agreed Bundle.  
Affidavit of  
M.Nadchatiram  
13th June 1968  
(continued)

1. I am the father and next friend of N. Mahadevan the Plaintiff herein.

10 2. N. Mahadevan was a pupil of King George V School, Seremban, (hereinafter referred to as "the said School") from January, 1967, and was continuously a pupil of the said school up to the 4th day of May, 1968.

3. On the 6th day of May, 1968, N. Mahadevan returned from the said school at 10.00 a.m. and informed me that the Headmaster of the said school, Mr. K.Anandarajan the 1st Defendant herein, had expelled him.

4. The School Leaving Certificate of N. Mahadevan dated the 4th day of May, 1968, was later sent to me and is hereto attached and marked "A1."

20 5. To the best of my knowledge and belief N. Mahadevan has been a good pupil of the said school and I, as his parent and guardian, have not received any complaint or warning of any want of discipline, conduct or scholastic achievements on the part of N. Mahadevan from the 1st Defendant the Headmaster of the said school prior to his expulsion from the said school.

30 6. On the 8th day of May, 1968, I had by a letter addressed to the 1st Defendant herein, requested for the grounds of the expulsion of N. Mahadevan, as a pupil from the said school, but to date I have not been stated specifically the reasons for the expulsion of N. Mahadevan except for the remarks in the School Leaving Certificate dated the 4th day of May, 1968, which reads as follows :-

40 "Childish, the attitude of this student as well as his behaviour have indicated that he has no desire to do at school what is expected of students at his level."



Exhibits  
 Exhibit P1  
 Agreed Bundle.  
 Affidavit of  
 M.Nadchatiram  
 13th June 1968

7. The 1st Defendant was the Headmaster of the said school for only three months and it is contended by me that this was insufficient time for the Headmaster to have formed the opinion he has so held and expressed in the School Leaving Certificate. On the contrary N. Mahadevan has had a meritorious school career, for he had not only obtained a Grade I in the Senior Cambridge Examination held in November, 1967, but had also qualified himself to undergo studies in Form VI by having successfully appeared in a keen competitive Form VI entrance examination held in August, 1967. The said pupil had actively partaken in extra mural activities in the said school, examples of which are as follows :- 10

- (i) In 1966 he took a leading role in the school play "Androcles and the Lion" written by Bernard Shaw which brought in much revenue for the said school; 20
- (ii) for three consecutive years, 1965, 1966 and 1967, he was the school champion in chess;
- (iii) in 1967 he was the school draughts champion;
- (iv) the report cards showing the said pupil's attainment in studies and also showing his conduct did not contain any adverse report on the Plaintiff N. Mahadevan, but on the contrary showed that the Plaintiff N. Mahadevan was one with good conduct. 30

8. I am advised and verily believe that the remarks as stated in the School Leaving Certificate is not a valid and sufficient ground for the 1st Defendant herein to have exercised his discretion under the Education (School Discipline) Regulations, 1959. 40

9. The order for expulsion of N. Mahadevan as a pupil from the said school was made in violation of the principle of natural justice

10. That the order for expulsion of N. Mahadevan from the said school has resulted in manifest injustice to N. Mahadevan.

11. The whole career of N. Mahadevan, the Plaintiff, will be in jeopardy if he is prevented from attending school.

10 12. Throughout his life the Plaintiff has been residing with his parents and nowhere else. The Plaintiff is now unable to pursue his studies even by way of private tuition as he is a Science student and no laboratory facilities are available for private study in Seremban.

13. The 1st Defendant was actuated by malice in expelling the Plaintiff for the following among other reasons:

- 20 (i) The Plaintiff's father was one of those who took a leading part in an attempt to retain the former Headmaster of the said school, when it was announced that he was to be replaced by the present Headmaster.
- 30 (ii) The 1st Defendant had been aware for some time that the Plaintiff had informed two brothers of the Plaintiff who are practising as advocates and solicitors in Seremban that the 1st Defendant caned female students contrary to the Education (School Discipline) Regulations, 1959, and the 1st Defendant resented the fact that one of the Plaintiff's said brothers rang the Headmaster the 1st Defendant, and asked him whether or not this allegation was true, that the said two brothers were contemplating appropriate action in the matter.
- 40 (iii) On a previous occasion, the Plaintiff's brother in his

Exhibits

Exhibit P1  
Agreed Bundle.

Affidavit of  
M. Nadchatiram  
13th June 1968

(continued)

Exhibits

Exhibit P1  
Agreed Bundle.

Affidavit of  
M.Nadchatiram  
13th June 1968

(continued)

capacity as advocate and solicitor had threatened action against the 1st Defendant for wrongful expulsion of a pupil one Alan Thong who thereafter was reinstated by the 1st Defendant.

(iv) The 1st Defendant was also actuated by malice in that he resented a report made to the Police by the Plaintiff a copy of which is attached hereto and marked "A.2." 10

(v) The malice of the 1st Defendant is further evidenced by the fact that on the 2nd day of April, 1968, the 1st Defendant treated the Plaintiff in such a manner as to cause serious mental anguish to the Plaintiff. When the Plaintiff was suffering from an illness the 1st Defendant refused to allow him to go home to receive proper care and attention and as a result of such refusal the Plaintiff's mental and physical condition was seriously affected as evidenced by a medical report attached hereto and marked "A.3." 20

13. The decision of the 3rd Defendant confirming the 1st Defendant's order of expulsion is vitiated and contrary to law in that: 30

(i) Mr. M. Nadchatiram, one of the Board of Governors of the said school, was wrongfully and unlawfully prevented from attending and voting at the meeting which confirmed the decision of the 1st Defendant.

(ii) The Plaintiff and his guardian were never given an opportunity to answer any of the allegations made by the 1st Defendant because the said allegations were never made known to the Plaintiff or his guardian. 40

(iii) The principles of natural justice were flagrantly violated.

14. I pray for an interim order that N. Mahadevan, the Plaintiff, be reinstated into the said school forthwith pending the trial of this action.

Affirmed by the above-named deponent at Seremban this 13th day of June, 1968 at 12.40 p.m. } Sd: M.Nadchatiram

Exhibits  
Exhibit P1  
Agreed Bundle.  
Affidavit of  
M. Nadchatiram  
13th June 1968  
(continued)

Before me:

10 Sd: M. Sangarapillai  
Commissioner for Oaths  
High Court Malaya,  
Seremban.

This Affidavit is filed by Messrs. Saraswathy Devi & Co., Solicitors for the Plaintiff, on behalf of the abovenamed deponent, whose address for service is at No. 9 Cameron Street, Seremban.

L/Cert. No. 143/68

Leaving  
Certificate  
4th May 1968

20 LEAVING CERTIFICATE

KING GEORGE V SCHOOL SEREMBAN

Name of pupil: N. Mahadevan  
Name of Father/Guardian: M. Nadchatiram  
School Number: 6573 Identity Card No:3998527

Date of Birth: 30/7/50 Place: Seremban  
BC/SD: BC  
Date of admission: 14/1/63 Form to which  
admitted: Form One  
Name of former school (if any): King George  
V Primary  
School

30 Date of leaving present School: 4th May 1968  
Reason for leaving: Expelled under Education  
(School Discipline)  
Regulations, 1959  
Highest Form passed (in words): Form Five  
Year: 1967  
In what Form at time of leaving (in words):  
Form Six Lower Science

Exhibits  
Exhibit P1  
Agreed Bundle.  
Leaving  
Certificate  
4th May 1968  
(continued)

Free place authority (with Category):.....  
Fees due \$.....Attendance during School  
Year: 57/64  
Extra Mural Activities:.....Nil.....  
.....  
Remarks on Conduct and Academic record:  
Childish The attitude of this student as  
well as his behaviour have indicated that  
he has no desire to do at school what is  
expected of students at his level.

10

Signature of Pupil:.....Sd.

Headmaster  
KING GEORGE V SCHOOL,  
SEREMBAN

Date: 4th May, 1968

This is the Exhibit marked "A1" referred  
to in the Affidavit of M. Nadchatiram,  
affirmed on the 13th day of June, 1968.

Before me:

Sd: M. Sangarapillai  
Commissioner for Oaths,  
High Court, Malaya,  
Seremban.

20

Police Report  
by Mahadevan  
10th April 1968

R E P O R T

Name: Mahadevan s/o Nadchatiram  
N.R.I.C. No: 3998527  
Sex: Male  
Age 17 years  
Address: No. 1, Jalan Atas, Seremban.  
Occupation: Student  
Report No: 1583/68

30

I am a student in King George V School,  
Seremban, and am in Form VI Lower (Science  
stream).

On 2.4.68 at about 10.10 a.m. I was in  
the school tuck shop. The Headmaster of  
the school named Mr. Anandarajan walked up  
to me and said that I and a few of my  
friends will be suspended and Allen Tong

will be expelled. At 11.10 a.m. on 2.4.68 I was told to come to his office together with Ng Kim Swee and Vijayapal.

Exhibits

Exhibit P1  
Agreed Bundle.

Police Report  
by Mahadevan  
10th April 1968

(continued)

10 Just as we were standing in front of the Headmaster's table he (the Headmaster) took a knife that had blade of about three inches long, pointed it at us and said "at the rate you fellows are going, you are all going to find this knife stabbed in your back."

20 He then sent off the other two boys out of his room and questioned me relating to events that took place on 29.3.68 at about 7.30 p.m. at a talent show held at the Town Hall, Seremban. He falsely accused me of having misbehaved at the Town Hall and said that I had bought a \$1/- ticket and sat on a \$3/- seat. He shouted at me at the top of his voice and when I pleaded with him to establish my innocence he kept on shouting at me. I was then asked to call the school captain Kiu Voon How and some members of the interact club. After he had talked to them (in my absence) I was again called into his room. This time I was absolved of most of the allegations he had made against me but said that I had used "dirty" words at the Town Hall. I denied this allegations as well. He 30 kept on shouting and I lost my nerves and sobbed.

40 After that he asked me to get to the class. I went to the bathroom and washed my feet. I paused for a moment and I then slowly walked up to the Headmaster's room and there told him that I was feeling giddy and I wanted to go home. He refused my request and asked me to go to the library. I obeyed him. I had been in the library for about 15 minutes when the Headmaster came up to me and asked me to get to his office. There he questioned me further and asked me to "swear on the life of my mother" that I never knew that I sat on a \$3/- seat. I swore as requested by him.

At this stage my state of mind and health was deteriorating and I felt that

Exhibits

Exhibit P1  
Agreed Bundle.  
Police Report  
by Mahadevan  
10th April 1968  
(continued)

only rest could help me. I again asked for permission to go home but I was asked to go back to the library. Just as I was getting down the steps I nearly fell and held to the wall and walked slowly to the Hall where I sat till school was over at 1.10 p.m.

I then asked my friend Kim Swee to take me home. While he was taking me home I fainted and was taken to my house in a passing car where I was subsequently attended to by a Doctor. 10

Sd: N. Mahadevan  
Mahadevan s/o Nadchatiram  
10.4.68

This is the Exhibit marked 'A.2' referred to in the Affidavit of M. Nadchatiram, affirmed on the 13th day of June, 1968.

Before me,

Sd: M. Sangarapillai,  
Commissioner for Oaths,  
High Court, Seremban. 20

Medical Report  
2nd April 1968

A. SOORIAN,  
LRCP. LRCS. L.M. (DUS)  
KELINIK SOORIAN  
154, Birch Road  
Seremban.  
Tel: 3978

Date 2nd April, 1968

Medical Report re: Mr. Mahadevan  
s/o Nadchatiram. (Examined on  
2nd April, 1968 at 2 p.m.) 30

I attended to the patient at No. 1,  
Jalan Atas, Seremban and on examination  
found -

- (1) Hypertension B.P.  $\frac{90}{50}$  m.m. h.g.
- (2) Pulse - fast and thready 100/min.
- (3) Coldness, pallor, sweating.

The above signs and symptoms were consistent with the Clinical state of shock. He was given immediate first aid and treatment.

Exhibits  
Exhibit P1  
Agreed Bundle.  
Medical Report  
2nd April 1968  
(continued)

- (1) Foot of bed raised.
- (2) Clothing loosened.
- (3) I.V. hydrocortisone hemisuccinate 100 m.g. stat dose given.
- (4) s/c injection 1/1000 adrenaline minims 8 (eight) given.

10 On resuscitation, a careful history was taken which showed that he had been subject to mental trauma prior to his episode. Patient was psycho-analysed and his condition was diagnosed as a nervous breakdown as a result of certain extraneous, ingurious stimuli.

20 Patient is a teenager and as such, the effect of the mental trauma has been maximal. Being still in his formative period of his character, his ego has been shaken up badly and it is no telling what repercussions may take place later on in his manhood.

Patient is still under psychotherapeutic treatment for his mental stress and strain and will continue to be so until he is well.

Sd: Dr. A. Soorian,  
L.R.C.P. L.R.C.S.,  
L.M. (DUS)

30 KELINIK SOORIAN,  
154, Birch Road,  
Seremban. Tel. 3978

This is the Exhibit marked "A3" referred to in the Affidavit of M. Nadchatiram affirmed on the 13th day of June, 1968.

40 Sd: M. Sangarapillai,  
Commissioner for Oaths,  
High Court, Malaya,  
Seremban.



Exhibits  
 Exhibit P1  
 Agreed Bundle.  
 Affidavit of  
 Anandarajan  
 4th July 1968

FEDERATION OF MALAYSIA  
 IN THE STATE OF NEGRI SEMBILAN  
 IN THE HIGH COURT IN MALAYA AT SEREMBAN  
CIVIL SUIT NO. 101 of 1968

Between

N. Mahadevan, (an infant)  
 suing by his father and  
 next friend M. Nadchatiram                      Plaintiff

And

- |  |            |
|--|------------|
| 1. K. Anandarajan (headmaster)<br>King George V School,<br>Seremban. | 10         |
| 2. The Minister for Education,<br>Malaysia.                          |            |
| 3. Board of Governors,<br>King George V School,<br>Seremban.         | Defendants |

AFFIDAVIT

I, K. Anandarajan, Headmaster, King  
 George V School, Seremban, affirm and state                      20  
 as follows :-

1. I am the Headmaster of the King George V School, Seremban. I was transferred from the Ministry of Education to my present post on 1st January, 1968.
2. I refer to the Affidavit of M. Nadchatiram dated 13th June, 1968 and filed by the Plaintiff in support of the Summons in Chambers in Civil Suit No. 101 of 1968.
3. With regard to paragraph 5 of the said Affidavit it is not true that the Plaintiff's parent was not informed of the Plaintiff's conduct and character in school. The Plaintiff's father was informed by phone of his son's bad behaviour in school. He defied the School's Prefects' Board, came late to school despite repeated warnings by his form teacher, and was rude to his teachers and was indifferent to his class work despite                      30

several warnings. On other occasions Datin Seenivasagam, the sister of the Plaintiff, and another brother came to see me on separate occasions about the Plaintiff's conduct in school.

10 4. With regard to paragraph 6 of the Affidavit, I complied with the provisions of the Education (School Discipline) Regulations, 1959, and I verily believe that it is not obligatory for grounds of  
 20 expulsion to be given to the parent of the pupil expelled in accordance with the said regulations. The remarks in the Plaintiff's School Leaving Certificate as quoted in the said paragraph 6 are not the grounds or reasons for the Plaintiff's expulsion. Those remarks are set out by the form teacher as a form of general remarks. The reasons  
 20 for leaving school are stated in the first part of the Certificate wherein it has been specifically stated that the Plaintiff was expelled under the Education (School Discipline) Regulations, 1959.

30 5. With regard to paragraph 7 of the Affidavit, the Plaintiff obtained a Grade I Certificate in the Senior Cambridge with 9 points for the best three subjects. He, therefore, retained his place in the Form VI because he had earlier passed his Form VI Entrance Examination and he retained his place only by a mere one point.

40 6. I deny that I was actuated by malice in expelling the Plaintiff. The decision to expel him was taken by me after consulting my Senior Teachers and after due consideration of the Plaintiff's conduct and character in school. To consider this question on disciplinary action against the Plaintiff, reports from form teachers and the Prefects' Board were first obtained and duly considered. Various meetings were held by the Senior Teachers and also with the form teachers when reports of the Plaintiff's conduct and character were discussed verbally. Subsequently these reports were reduced in writing which I now enclose as Exhibit B1 to B6.

Exhibits

Exhibit P1  
Agreed Bundle.

Affidavit of  
Anandarajan  
4th July 1968

(continued)

Exhibits  
 Exhibit P1  
 Agreed Bundle.  
 Affidavit of  
 Anandarajan  
 4th July 1968  
 (continued)

7. On 2nd April, 1968 I called the Plaintiff up for questioning as to his bad behaviour at a Talentime show held on the 1st April, 1968. I also questioned two other boys on the same day. One boy was suspended forthwith by me and I considered taking expulsion action against the Plaintiff. With that in view I consulted my Senior Teachers and the form teacher who were all of the view that in view of the Plaintiff's extremely bad conduct and character he should be expelled. After several discussions and receiving all verbal reports from the form teacher I decided to expel the Plaintiff. This decision was taken by me on the 10th April, 1968. As the next day was the Speech Day and the school was closing, the decision was not conveyed to the Plaintiff until the 6th May, 1968 which was the first day of the new term. The Board of Governors, however, were notified of my decision during the 1st Term holidays, and they were given two weeks notice to meet on the 3rd May, 1968. This was in accordance with the requirements of the Board of Governors. I enclose a copy of my notice dated 17th April, 1968, B6A.

8. Further, with regard to paragraph 13 (i), I say that I did not know that Mr. M. Nadchatiram opposed the transfer of the previous Headmaster. I was then in Tokyo attending a UNESCO Conference and it was on my return to Malaysia that I was informed of my transfer from the Ministry to King George V School. With regard to the allegation of caning of female pupils I say that the "caning" was nothing but light taps on the palms of the hands of the said pupils. In no circumstances did I inflict corporal punishment as alleged, apart from that as stated earlier. I went round the class with a cane in my hand and with a view to improving their studies I merely tapped some of the pupils both boys and girls very lightly on their palms. I would like to stress that this was not as a punishment but was done with a view to motivate them to their studies, which I had found lacking. At no time did I inflict "corporal punishment" on the girls

as alleged because I was fully aware that under the Regulations inflicting of corporal punishment on girls is prohibited. I deny that any of the Plaintiff's brothers rang me up, to ask whether or not I had caned female students and that the brothers of the Plaintiff were contemplating appropriate action in this matter. Later, I came to understand that the Plaintiff or his representatives had been visiting several girl pupils and had obtained statements from them which were more or less dictated by the Plaintiff's representatives. These statements were taken from the pupils after the Plaintiff was expelled. I enclose copies of statements from three girls marked Exhibit B7 and B9. I submit therefore that the allegation in paragraph 13(2) that the Plaintiff's brother rang me up about the caning of female students is not true. This cannot be true because the statements from the girls were taken after the expulsion of the Plaintiff.

9. As to paragraph 13(3) I say that the pupil named Alan Thong was never expelled from school. He was merely suspended from school by me during the last week of the term and only until the end of the term for kicking a guest, and he came back after the holidays. The Plaintiff's brother, J. Nadchatiram had come to see me but he told me that he had come not as a lawyer but to discuss his own brother's and Alan Thong's case. Mr. J. Nadchatiram tried to persuade me to lift the suspension on Alan Thong but I refused to do so.

10. With regard to 13(iv) I say that this report by the Plaintiff had not influenced my decision to expel the Plaintiff. I had already decided to expel the Plaintiff but was only waiting to discuss this with my Senior Teachers which I did in early April 1968. The latest incident took place on the 2nd April, 1968. The report by the Plaintiff was not made to the Police till the 10th April, 1968 and a copy thereof was sent to me a few days later.

Exhibits

Exhibit P1  
Agreed Bundle.

Affidavit of  
Anandarajan  
4th July 1968

(continued)

Exhibits

Exhibit P1  
 Agreed Bundle.  
 Affidavit of  
 Anandarajan  
 4th July 1968  
 (continued)

11. I deny paragraph 13(v) that I treated the Plaintiff in such a manner as to cause serious mental anguish to the Plaintiff. As a matter of fact he even disobeyed my instruction to wait in the library and when I went to look him up with another Senior Teacher he was nowhere to be found in the library and had in fact left the school without any permission whatsoever. On the 10th April, 1968 the Plaintiff also left the school without permission and upon seeking an explanation the next day he gave a written statement that no permission was given to him to go home. I refer to this statement marked Exhibit B 10.

10

12. I submit that the order of expulsion was made in good faith and in the interest of the school including the teachers and the pupils. The King George V School is a well-established institution in this country having a total of 1,680 pupils with 34 graduate teachers. The Board of Governors of which I am also the Secretary heard the appeal of the Plaintiff's father and after due deliberation of the whole matter they decided to reject the appeal. The Board, however, made a recommendation that the Plaintiff be re-admitted to another school in view of the Plaintiff's age.

20

30

13. In view of the Plaintiff's conduct and behaviour in school his presence in school would positively be a bad influence not only on the students but also the school teachers and this in turn may affect the morale of everyone concerned. In this connection I would like to state that two of my Senior Teachers have been sent notices of legal action because of reports that they had made to me concerning the Plaintiff. I refer to the notices marked Exhibit B11 and B12. I also reliably understand that some other teachers have been similarly approached verbally. In the light of all these facts, I submit that the Plaintiff should not be re-admitted to this school but should be urged to accept the recommendation of the Board of Governors for admission to another school. The Plaintiff has a sister in Kuala Lumpur

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and one in Ipoh where he can attend school in the Science stream.

14. In 1967 the Plaintiff was punished by the previous Headmaster and the Plaintiff and his family reacted by sending a lawyer's letter threatening legal action. This letter was subsequently withdrawn.

Exhibits  
Exhibit P1  
Agreed Bundle.  
Affidavit of  
Anandarajan  
4th July 1968  
(continued)

10 Affirmed by the above )  
named deponent at )  
Kuala Lumpur, this ) Sgd:  
4th day of July, )  
1968, at 12.55 p.m. )

Before me:

Sgd:  
Pesurohjaya Sumpah,  
Mahkamah Tinggi,  
Kuala Lumpur.

20 This Affidavit is filed by the Senior Federal Counsel on behalf of the abovenamed deponent, whose address for service is c/o Attorney-General's Chambers, Kuala Lumpur.

C O P Y

This is a report on Mahadevan N.

Report by Ung  
Tat Hean  
(undated)

1. Last year I taught geography to Form V Sc. (1). Mahadevan was one of the pupils in that class. I found Mahadevan attentive but at times he would indulge in some childish pranks.

30 As Senior Asst. and prefects master of the school I had to deal with him in numerous occasions. On one occasion the Headmaster, Mr. Navaratnarajah had to inflict corporal punishment on Mahadevan for a breach of discipline. This matter was subsequently brought up by legal firm of Nadchatiram who threatened to sue the Headmaster. However, the matter was not pursued further and the case, if there was one, was dropped.

Exhibits

Exhibit P1  
Agreed Bundle.

Report by Ung  
Tat Hean  
(undated)  
(continued)

Towards the beginning of November last year I had to deal with Mahadevan on a more delicate matter. On my afternoon rounds as supervisor of the Regional Training Centre I found Mahadevan with a Malay girl pupil in the Upper Six science class in a classroom. The doors and the shutters of this class were closed.

Incident (1): Both were seated in adjoining chairs with some books on the desks. Both were surprised when I opened the doors and went in. On being questioned what they were doing in the classroom, Mahadevan replied that they were both revising "Chemistry". I told them that they could be allowed to remain in the classroom provided the doors were kept open. This was reported to the Headmaster on the following Monday, as this happened on a Friday afternoon. 10 20

Incident (2): On another occasion - this time on Saturday morning sometime between 10.00 a.m. to 1.00 p.m. - I was again on my rounds as supervisor of the Regional Centre when I heard some noises coming from one of the classrooms (the first one along the block by the exit gate). On trying the doors I found them bolted and locked. I tried the key-hole and the grill-work along the wall but found all these stuffed with paper. Mr. Tan Lam Lin was having a class with the trainees in the adjoining class. I asked him to accompany me to the next class and we banged at the door asking, whoever was in it, to open the door. After sometime and because of our persistent banging, the door was opened. We found Mahadevan with the same Malay girl of Upper Six Science Class. This time I was angry with both of them as I had told them not to shut themselves in a classroom after the previous incident. I reprimanded both of them. The matter was again reported to the Headmaster. The Headmaster ruled that since the Cambridge Examination written 30 40

papers were about to start it would be wise not to pursue the matter.

Incident (3): This incident happened at the Malay Girls' Hostel and was reported to me later. Mahadevan and the same pupil misbehaved themselves within the compounds of the girls' Hostel. This incident took place at about the same time as the two incidents described above.

10

2. This year Mahadevan has had a few confrontation with the Prefects' Board. One morning he came to me with a complaint against the School Captain I asked him to relate the incident. I found him that he were definitely in the wrong and I told him so. When he started again I told him to get lost". This was later reported to the Headmaster by the sister as a rude action on my part.

20

One morning about two weeks before the school closed I was in the school office when the Headmaster had to deal with some boys in his office. Mahadevan was one of them. Later, during the last period, I accompanied the Headmaster to look for Mahadevan. He was not found in the Vith Form Library. A few days later I and Mr. Ho Koh Chye were in the Headmaster's office when Mr. Jagadevan and Mrs. Tong came to see the Headmaster.

30

As Senior Assistant I have received complaints from various teachers regarding Mahadevan in class. These are valid complaints and I find that these will have damaging effect on other pupils if not corrected at once.

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Sgd: Ung Tat Hean.

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Exhibits

Exhibit P1  
Agreed Bundle.

Report by Ung  
Tat Hean  
(undated)

(continued)



Exhibits

Exhibit P1  
Agreed Bundle.

Report by  
Kenneth Dressen  
15th April 1968

STRICTLY CONFIDENTIALREPORT CONCERNING THE BEHAVIOUR OF N.  
MAHADEVAN

During the first term of this year as a member of lower six science II class N. Mahadevan's actions and attitudes have indicated that he is not particularly interested or concerned about what others were trying to do for him. He has shown a lack of interest in school activities in which he could actively participate. 10

Mahadevan has been indifferent in his attitude towards his studies as well as being childish in class. Questions directed to him would elicit answers of a type that would not be expected of much younger children. His work has been incomplete and poorly done. During class time he would prefer to gaze out of the window than to pay attention to the lesson. His test results place him near the bottom of his class in achievement. 20

Re-enforcing this description is the fact that even after I had made it clear to the class that tardiness in arriving at school should not be necessary Mahadevan has frequently been late in arriving at school and only when questioned closely has he offered any explanation. During the last half of the term his attendance has been irregular and many of his absences have not been adequately explained. 30

His general attitude towards others and towards the possessions of others indicate a lack of any sense of responsibility. Mahadevan has not given a hand, unless told to do so by the teacher, in performing daily classroom chores. In the laboratory he has put forth little effort to indicate that he cares about the condition in which he leaves laboratory apparatus after using it. 40

Recently at a musical talentime sponsored by the Interact Club Mahadevan and a group of boys, after arriving to find that the least expensive tickets had been sold out,

became belligerent and rude before buying more expensive tickets. According to the president of the Interact Club, when these boys, including Mahadevan, entered the hall they refused to sit in the seats for which they had tickets. Instead they forced their way into still more expensive seats. Apparently Mahadevan was flicking lighted matches during the show and also threatening to throw stones at the performers. Several times during the show itself Mahadevan left the premises. The reason he gave me on one of these occasions was that he wanted to buy a drink.

10

It is my opinion that because of the noticeable effect that the actions and attitudes of Mahadevan and a few others in the same class on the other students in the class, these actions cannot and should not be tolerated longer.

20

Sgd: (Kenneth Dressen)  
Kenneth Dressen  
Form Master  
Lower Six Science II  
15th April, 1968.

STRICTLY CONFIDENTIAL

CONFIDENTIAL REPORT ON N. MAHADEVAN

Report by  
Hillary S.Ong  
2nd April 1968

30

I have known N. Mahadevan for the past two years, having taught him last year in Form 5 Sc. (1) and the year in Form 6 L. Sc. (2).

To say the least, N. Mahadevan is of a very playful character and very often during my physics practical sessions. I have found him to be a great nuisance to me and to the class by his mischevious acts and his colleagues.

40

On many occasions, I had to warn him and to caution him for his playfullness, his pranks, his nuisance by the very fact that instead of doing his work with his partner, he

Exhibits

Exhibit P1  
Agreed Bundle.

Report by  
Kenneth Dressen  
15th April 1968

(continued)

Exhibits

Exhibit P1  
Agreed Bundle.

Report by  
Hillary S.Ong  
2nd April 1968

(continued)

would go around the Laboratory, talking, gossiping and disturbing others who are at work.

On a few occasions, I had the unpleasant duty of sending him out of the Lab. for the trouble that he was causing in the class.

N. Mahadevan has, in my opinion, never shown any interest in my subject, Physics, and I have always felt that his presence in the class, is bad and detrimental to the morale of the class generally.

10

His lack of interest in his work, his lack of enthusiasm coupled with his playfulness is, without any doubt, a source and a very bad effect to his fellow classmates. I have personally seen and felt that N. Mahadevan was, from time to time, affecting some of his friends and disturbing them while they were at work. This bothers me, for, as a teacher the standard of a class and its discipline must be maintained.

20

Sometime this year, I had no choice but to criticise Mahadevan's work and in this respect, I would like to refer to his Physics Practical Book, where I have made all my comments and remarks about him.

As his teacher, my frank opinion is, that I will not be sorry to see him go, for the good of the others in his class.

Sgd. Hilary S. Ong  
2.4.68.

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Report by  
Chang Kwai  
17th April 1968

REPORT ON N. MAHADEVAN, FORM 6 LOWER 2,1968

STRICTLY CONFIDENTIAL

Ever since the beginning of this year N. Mahadevan has been very indifferent to his school work, in spite of several mild reprimands from me.

He is positively a "bad influence" on

the class as a whole.

The following are some of the observations I have made about him:

- (1) He avoided my Chemistry Test without giving any reason.
- (2) He seldom brought books and notes to school (class).
- (3) He seldom took active part in Practical Work (Chemistry) unless reprimanded when he would appear to do something. Even last year he would talk with and disturb his "neighbours" in class until reprimanded and separated from these "neighbours".
- (4) He yawned constantly in class, which, to say the least, has a depressing effect on the class and the teacher. He refused to reveal the cause for this lethargy.
- (5) Had a "half-dazed" look in class (apparently through lack of sleep), often looking out of the class without purpose, and occasionally coming late to class.

My recommendation is that positive action should be taken against him. His unworthiness as a student in this School has caused much concern to the teachers and students.

Submitted to the  
Headmaster,  
King George Sec.Sch.  
Seremban.

Sgd: Chang Kwai  
Guru Kanan Sains,  
Sekolah Menengah  
King George V,  
Seremban.  
17.4.68.

Exhibits

Exhibit P1  
Agreed Bundle.

Report by  
Chang Kwai  
17th April 1968

(continued)

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Exhibits

Exhibit P1  
Agreed Bundle.

Report by  
School Captain  
20th April 1968

STRICTLY CONFIDENTIALCONFIDENTIAL REPORT ON MAHADEVAN, NG KIM  
SWEE AND VIJAYAPAL SINGH

The above boys are in Form Sixth Lower, the former two being in Lower six science 2 and 3 respectively and the latter is in lower six arts 1. The three were involved in misbehaviour during the Interact's Interschool Talentime show held on 23rd March at the town hall. They were in the company of a few boys who are noted for unhealthy practices and filthy language and their presence with these boys is deplorable.

10

I have evidence that they sat in \$3/- seats though they did not have the proper tickets. Secondly they refused to stop at the checkpoint but walked straight to the \$3/- seats. I was sitting in front of these boys and have the ordeal of hearing filthy and nauseating words issuing from them. Uncomplimentary and rude remarks were thrown to the stage (and public) and I noted that Ng Kim Swee was quite free with his words here. On the whole, the group was a public nuisance and several times the three and the rest were moving in and out of their places dislodging chairs in the process.

20

Here are some offences committed by the three boys during the first term:  
Mahadevan - He was called up to the Headmaster for refusing to carry out routine punishment issued by the Prefectorial Board early in the term.

30

On April 11th, he had two occasions when he passed me in a Mercedes-Benz on Jalan Dato Klana, I was cycling home on that afternoon. On the first occasion he turned round and made rude faces at me. On the second occasion he had the driver horning loudly at me (though I was on the other side of the road and were not in the way) while he again pulled his face at me. Now this occurred when I was the only person on the road within normal sighting distances. Any denial of this act of insubordination to the School Captain is absurd. When

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pulled up the next morning for an explanation he walked away while I was still engaged in the conversation and I had to ask him to return. This again is a blatant abuse to the School Captain and the Prefectorial Board.

10

Vijapal Singh - He was the class monitor during the first term. On the next Monday morning after the talentime, I caught him coming late to school at 8.00 a.m. No reasonable excuse was given.

20

Ng Kim Swee - He was the monitor of lower six science 2 until his transfer to lower six science 3. As a monitor he is the worst example failing to carry out any responsibility and as such his class was given cleaning tasks to perform for being the dirtiest class of the week. He reported for duty late and was not in proper school uniform. He was very insolent in answering my questions.

In conclusion I would like to point out that the three boys have been and are still in the bad books of the prefectorial board. Their behaviour in the school and in public is deplorable and not deserving of true Georgians.

Sgd: ?  
(School Captain)

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STRICTLY CONFIDENTIAL

20th April, 1968.

A REPORT ON THE BEHAVIOUR OF FOUR STUDENTS  
AT THE TALENTIME

Report on  
Mahadevan and  
3 others.  
20th April 1968

40

A group which includes, Allen Thong, Ng Kim Swee, Mahadevan and Vijayapal Singh, came in after the talentime show had started. Three of the Interactors were at the §1, §2 partition. K. Hariram, one of them, tried to stop Vijayapal Singh by catching him but he ignored and walked past. Then Hariram went and reported to the Chairman of the Talentime Committee. He said that he would take appropriate action.

Exhibits

Exhibit P1  
Agreed Bundle.

Report by  
School Captain  
20th April 1968

(continued)

Exhibits

Exhibit P1  
Agreed Bundle.

Report on  
Mahadevan and  
3 others.  
20th April 1968

Later, one of the Interactors, Tank Wai Chee, who was at the §2, §3 partition reported that he asked the group for their tickets but they ignored him.

Another Interactor Lim Meng Teck, reported that he saw the group flicking matches while he was on stage.

Sgd: ?

Sgd: ?

Notice of  
Board  
Meeting  
17th April 1968

Ref.(1) in K.G.V.Sec.  
8/2/64/SJ.1.

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King George V Secondary  
School,  
Seremban.

17th April, 1968.

To:

All Members of  
The Board of Governors,  
King George V School,  
Seremban.

20

Meeting of the Board of Governors  
King George V School, Seremban

Notice is hereby given that the 2nd Meeting for 1968 of the Board of Governors of King George V School, Seremban, will be held on the 3rd of May, 1968 at 5.00 p.m. in the office of the Headmaster.

Agenda:

1. Announcement of New Member of the Board.
2. Confirmation of the Minutes of the previous meeting.
3. Matters arising.
4. Expulsion of pupil.
5. General (i) Certificate of Members  
(ii) Swimming Pool and Sports Complex

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177.

- (iii) Food and Fun Fair
- (iv) Lavatories
- (v) Progress of Buildings

Sgd: (K. Anandarajan)  
Secretary,  
King George V School,  
Seremban.

Exhibits  
Exhibit P1  
Agreed Bundle.  
Notice of  
Board Meeting  
17th April 1968

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C O P Y

10 On the 11th May Mr. Nadchatiram  
with his son came to my house and asked me,  
if any of the girls in my school was caned  
by the Headmaster. I was very reluctant  
to answer but as they pestered me I had to  
reply in the affirmative. They wanted to  
question me further but my father came in  
and told them that my house was not the place  
to ask such questions. Also he told them it  
would be better to go to the school and find  
out from there. After this they left.

Statement by  
Yegeswari  
20th May 1968

20 Sgd: K. Yegeswari  
(K. Yegeswari)  
20.5.68

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C O P Y

This is what I wrote to the Nadchatiram  
Bros. on the 11th of May, 1968.

Statement by  
Santo Kaur  
20th May 1968

30 Sometime in the middle of February, the  
Headmaster, Mr. K. Anandarajan caned the girls  
in my class. The Headmaster asked the teacher,  
Mr. Russel, to leave the class. Some of the  
girls were caned 4 times some 5 or 6 times.  
I, Santo Kaur was caned 6 times. The other  
girls who were caned are :-

Yegeswari, Ruznah Rashid, Latifah, Raja  
Hayati, Fatimah, Ros Halip, Zawiah Yusof,  
Shamsiah Ghani and Mimi Ismail.



Exhibits

Exhibit P1  
Agreed Bundle.

Statement by  
Santo Kaur  
20th May 1968

(continued)

The above statement was written on 11th May by Santo Kaur and signed. This was done because I was persuaded to do so, and most of it was dictated to me. Mr. J. Nadchatiram came to my house and pestered me and to get rid of him, I had to sign.

On the 17th of May, Mr. S.Nadchatiram and his sister came to my house. She was trying to convince my mother and sister that the H.M. was trying to give more caning to all poor people and sack them and replace them with rich students. She also told me that I can sue the H.M. for \$1,000 to \$2,000 for caning me. In order to prove this, my sister can be a witness.

10

Sgd: Santo Kaur  
(Santo Kaur)  
20.5.68.

P.S.

My parents did not make any complaints about it.

20

Sgd: Santo Kaur  
(Santo Kaur)

Statement by  
Rosnah Rashid  
11th May 1968

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C O P Y

This is what I wrote to the Lawyer on the 11th of May, 1968.

Sometime in the middle of Feb., the Headmaster, Mr. K. Anandarajan caned the girls in front of the class. Some of the girls were caned 4, 5 and 6 times. I was caned 3 times. The other girls who were caned are :-

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Raja Hayati,  
Rcs Halip,  
Zawiah Yusof,  
Fatimah,  
Shamsiah Ghani,  
Mimi Ismail and  
Santo Kaur

179.

The above statement were written on Sat. the 11th by me. This was done because I was forced and persuaded to do so and most it was dictated to me. The lawyer also pestered me. My parents did not make any complaint.

Sgd: Rosnah Rashid  
(Rosnah Rashid)

Exhibits

Exhibit P1  
Agreed Bundle.

Statement by  
Rosnah Rashid  
11th May 1968

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C O P Y

STRICTLY CONFIDENTIAL

Statement by  
Mahadevan  
(undated)

10

N. Mahadevan

Dear Sir,

I went to my brother's office as I had to some important work there. No permission was granted. I left because I saw many sixth formers leaving and they too didn't get permission. I was accompanied by Vijayapal, and Kim Swee, the former who gave me a lift from the bus stop to the temple.

20

Yours,  
Sgd: ?

Red pen given by the Headmaster

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C O P Y

NADCHATIRAM BROTHERS, ADVOCATES & SOLICITORS  
133, Jalan Paul  
Seremban.

Letter to  
Kenneth Dressen  
14th May 1968

Nadchatiram Sahadevan, Barrister-at-Law,  
(Middle Temple)

Nadchatiram Jegadevan, Barrister-at-Law,  
(Lincolns Inn)

14th May, 1968

30

BY HAND

Exhibits  
Exhibit P1  
Agreed Bundle.

Letter to  
Kenneth Dessen  
14th May 1968

(continued)

Mr. Kenneth Dessen,  
King George V School,  
SEREMBAN.

Dear Sir,

Re: N. Mahadevan

We are informed that you have given unfavourable and malicious reports to the Headmaster, Mr. K. Anandarajan, King George V School, Seremban, concerning the above-named pupil, N. Mahadevan, which culminated in the wrongful and illegal expulsion of the said Mahadevan, our client.

10

We are to request you for a copy of the report that was given by you to the said headmaster for our due perusal.

TAKE NOTICE that our client hereby expressly reserves his right of action against you for damages for having aided and abetted and wrongfully instigated the expulsion of the said N. Mahadevan from school.

20

Yours faithfully,

Sgd: ?  
As Agents for  
S. Seenivasagam & Sons,  
Advocates & Solicitors,  
No. 7, Hale Street,  
IPOH.

C O P Y

Letter to  
Loganathan  
14th May 1968

NADCHATIRAM BROTHERS, ADVOCATES & SOLICITORS, 30  
133, Jalan Paul,  
Seremban.

Nadchatiram Sahadevan,  
Barrister-at-Law,  
(Middle Temple)  
Nadchatiram Jegadevan,  
Barrister-at-Law,  
(Lincolns Inn)

.....196 .

181.

Telephone No. 3047.

Ref: Your  
Our BY HAND 14th May 1968

Mr. K. Loganathan,  
King George V School,  
SEREMBAN.

Exhibits

Exhibit Pl  
Agreed Bundle.

Letter to  
Loganathan  
14th May 1968

(continued)

Dear Sir,

Re: N. Mahadevan

10 We are informed that you have given unfavourable and malicious reports to the Headmaster, Mr. K. Anandarajan, King George V School, Seremban, concerning the above-named pupil, N. Mahadevan, which culminated in the wrongful and illegal expulsion of the said Mahadevan, our client.

We are to request you for a copy of the report that was given by you to the said headmaster for our due perusal.

20 TAKE NOTICE that our client hereby expressly reserves his right of action against you for damages for having aided and abetted and wrongfully instigated the expulsion of the said N. Mahadevan from school.

Yours faithfully,

30 Sgd: ?  
As Agents for  
S. Seenivasagam & Sons,  
Advocates & Solicitors,  
No. 7, Hale Street, Ipoh.

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FEDERATION OF MALAYSIA  
IN THE STATE OF NEGRI SEMBILAN  
IN THE HIGH COURT IN MALAYA AT SEREMBAN  
CIVIL SUIT NO. 101 of 1968

Between

N.Mahadevan, (an infant)  
suing by his father and  
next friend M. Nadchatiram Plaintiff

Affidavit of  
Dato Abdul  
Jalil bin Hj.  
Aminuddin  
4th July 1968

Exhibits

And

Exhibit P1  
Agreed Bundle.  
Affidavit of  
Dato Abdul  
Jalil bin Hj.  
Aminuddin  
4th July 1968  
(continued)

1. K. Anandarajan (Headmaster)  
King George V School,  
Seremban.
  2. The Minister for Education,  
Malaysia.
  3. Board of Governors,  
King George V School,  
Seremban.
- Defendants

AFFIDAVIT

I, Dato' Abdul Jalil bin Haji Aminuddin  
residing at Kuala Pilah Road, Ampangan, Seremban  
do hereby affirm and state as follows :- 10

1. I am the Chairman of the Board of Governors  
King George V School, Seremban. There are 12  
members on the Board including myself.

2. I have read the Affidavit of Mr. M.  
Nadchatiram dated 13th June, 1968 as well  
as the Affidavit of Mr. K. Anandarajan,  
the 1st Defendant, dated 3rd July, 1968.  
Mr. Anandarajan is the Headmaster of the 20  
King George V School, Seremban.

3. The Plaintiff was expelled by the Head-  
master in April, 1968, and notice thereof was  
given to the Board on 17th April, 1968, for  
the purpose of holding a meeting which was  
scheduled on 3rd May 1968 to discuss the  
expulsion. The meeting was postponed as  
there was no formal appeal by the parent and  
also because the written order of expulsion  
was not given to the parent of the plaintiff. 30  
The written order of expulsion was made by  
the Headmaster on the 4th May, 1968 and this  
decision was conveyed by letter to his father  
on 8th May, 1968. Subsequently, on the 20th  
May, 1968, the father of the Plaintiff appealed  
to the Board in accordance with the provisions  
of the Education (School Discipline) Regulations,  
1959. The matter was further adjourned to 22nd  
May, 1968, and subsequently to the 27th May,  
1968, when the Plaintiff's father put in an  
additional appeal. Thereafter, the meeting 40

was adjourned to the 29th May, 1968, when the appeal was considered by the Board. The Plaintiff's father is also a member of the Board of Governors. He requested that he be heard first as he was not feeling well. He then presented his appeal and answered questions put to him by the Board.

Exhibits

Exhibit P1  
Agreed Bundle.

Affidavit of  
Dato Abdul  
Jalil bin Hj.  
Aminuddin  
4th July 1968

(continued)

10

4. After Mr. Nadchatiram had put forward his case he stated that he was not feeling well and asked permission to leave the meeting. As Chairman of the Board I gave him permission to leave the meeting as requested. The Headmaster then presented his case. He, too, answered many questions put to him by various members of the Board. After this he left the meeting to enable the Board to discuss the appeal. The Board discussed the appeal for more than an hour and came to the following decision:

20

"The Board having heard the case put by the Appellant (Mr. M. Nadchatiram) and the Headmaster and having discussed the matter at considerable length is of the unanimous opinion that :-

(a) the action taken by the Headmaster is fully justified and

(b) the Board recommends to the Registrar that the boy be re-admitted to another school in view of the boy being young."

30

I then informed Mr. Nadchatiram of the Board's decision by letter. I refer to the copy of the letter dated 1st June, 1968 marked Exhibit C1.

40

5. The King George V School, Seremban, is one of the leading schools in Malaysia and has a history of a high standard of teaching and discipline. The members of the Board of Governors consists of prominent citizens of the State of Negri Sembilan. There are 12 members of which two are lawyers, two State Assemblymen, one doctor, one M.C.S. Officer, who is also the State Financial Officer, Negri Sembilan, two prominent businessmen, three Government Officers and myself as

Exhibits

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Affidavit of  
Dato Abdul  
Jalil bin Hj.  
Aminuddin  
4th July 1968

(continued)

Chairman. I have been a Deputy Chief Police Officer of the State of Negri Sembilan and have previously been a member of Parliament as well as of the State Assembly, wherein I served as the Speaker of the State Assembly, Negri Sembilan. I am also a member of numerous statutory boards like the E.P.F. F.L.D.A., R.R.I. etc.

6. The appeal by the Plaintiff's parent was heard and considered in accordance with the provisions of the (Education School Discipline) Regulations, 1959. The parent had put in written appeals which were circulated to all members of the Board. He was also given an opportunity to address the Board, and he answered questions that were put to him by members of the Board. I deny that Mr. M. Nadchatiram was wrongfully and unlawfully prevented from attending and voting at the meeting which confirmed the decision of the Headmaster. As stated earlier in my Affidavit Mr. Nadchatiram was present at the meeting and he specifically requested that he be allowed to be heard first and as he was not feeling well, he then presented his appeal and answered questions which were put to him. After he had finished with his case he said that he was not feeling well, and asked permission to leave the meeting. As Chairman of the Board I granted him permission to leave the meeting as requested by him. When the Headmaster expressed his views before the Board Mr. M. Nadchatiram had already left. He, therefore, on his volition refused to be present to hear the views of the Headmaster. 10  
20  
30

7. The decision to reject the appeal of the Plaintiff was unanimous and the Board was of the view that the presence of the Plaintiff in the school was most undesirable and would adversely affect the discipline, good name and morale of 1,680 school pupils both boys and girls and 72 teachers. The Board has now been sued by the Plaintiff and I verily believe that the Plaintiff is being vindictive and revengeful. This has caused a great deal of concern among the members of the Board as well as the teaching staff of this school. 40

Exhibits

Exhibit P1  
Agreed Bundle.

Affidavit of  
Dato Abdul  
Jalil bin Hj.  
Aminuddin  
4th July 1968

(continued)

10 The Board has specifically recommended that the Plaintiff be readmitted to another school in view of his age. The parent of the Plaintiff however, has so far, to the best of my knowledge, refused to take advantage of this recommendation. I am sincerely of the view that if the Plaintiff is reinstated by the order of this Honourable Court the effect of such reinstatement would be very adverse on the school. Indeed, I also reliably learn that several teachers have been approached by the Plaintiff or his representative warning them of the reports that they have made to the Headmaster and two teachers have actually received notices of legal action. In the circumstances it would be most difficult and very embarrassing to the teachers, the school Prefects Board and to the Headmaster to have him back in this school. Apart from this, 20 the other pupils too would view this action on the part of the Headmaster and on the part of the Board of Governors with scant respect which in turn will have an adverse effect on the other school children who are of an impressionable age.

30 8. As stated earlier the decisions to reject the appeal was unanimous. Ten members of the Board were present including myself. Another member Enche Sharri bin Harun was absent and the 12th Member who is the Plaintiff's father left the meeting at his own request after he had presented his case.

Affirmed by the above )  
 named deponent at )  
 Kuala Lumpur, this ) Sgd:  
 4th day of July, )  
 1968 at 10.30 a.m. )

Before me,

40 Sgd:  
 PESUROHJAYA SUMPAH MAHKAMAH  
 TINGGI  
 KUALA LUMPUR

This Affidavit is filed by the Senior Federal Council on behalf of the abovenamed deponent, whose address for service is c/o Attorney-General's Chambers, Kuala Lumpur.



Exhibits  
Exhibit P1  
Agreed Bundle.

Letter from  
Chairman Board  
of Governors  
1st June 1968

SULIT

Sekolah Menengah Jenis Kebangsaan,  
King George V  
Seremban.

1st June, 1968

COPY

Messrs. M. Nadchatiram,  
No. 1, Jalan Atas,  
Rahang Square,  
Seremban.

The Board after having heard the case  
put up by the Appellant, (Mr. M. Nadchatiram)  
and the Headmaster, and having discussed the  
matter at considerable length is of the  
unanimous opinion that :-

10

- (a) the action taken by the Headmaster  
is fully justified, and
- (b) the Board recommends to the Register  
that the boy be readmitted to another  
school in lieu of the boy being  
young.

20

Sgd: ?  
Chairman  
Board of Governors,  
King George V Sec. School,  
Seremban.

c.c.

1. The Permanent Secretary,  
Ministry of Education,  
Kuala Lumpur.
2. The Chief Education Officer,  
Negri Sembilan,  
Seremban.

30

FEDERATION OF MALAYSIA  
IN THE STATE OF NEGRI SEMBILAN  
IN THE HIGH COURT IN MALAYA AT SEREMBAN  
CIVIL SUIT NO. 101 of 1968

Exhibits

Exhibit P1  
Agreed Bundle.  
Affidavit of  
M.Nadchatiram  
4th July 1968

Between

N. Mahadevan, (an infant)  
suing by his father and  
next friend M. Nadchatiram                      Plaintiff

And

- 10      1. K. Anandarajan, (Headmaster)  
            King George V School,  
            Seremban.
2. The Minister for Education,  
            Malaysia.
3. Board of Governors,  
            King George V School,  
            Seremban.    Defendants

AFFIDAVIT

20      I, M. NADCHATIRAM of No. 1 Jalan Atas,  
            Seremban do hereby affirm and state as  
            follows :-

1. I have read the Affidavit of Dato Abdul  
            Jalil bin Aminuddin dated 4th day of July,  
            1968.
- 30      2. With reference to paragraphs 3 and 4 of  
            the Affidavit my presentation of the appeal  
            was by way of Petition of Appeal dated 25th  
            day of May, 1968 and also by a letter dated  
            29th May, 1968. A perusal of these documents  
            particularly to the one dated 29th May, 1968  
            to para 10 (vii) which reads as follows :-

"You want Mahadevan and his father to  
appeal. How do you expect them to  
appeal. What are the charges against  
the student."

makes it abundantly clear that the charge  
against my son were not made known to me.

Exhibits  
 Exhibit P1  
 Agreed Bundle.  
 Affidavit of  
 M.Nadchatiram  
 4th July 1968  
 (continued)

3. I also attach herewith a copy of a letter to the headmaster and marked AAL asking him for the ground of expulsion. No reply was received to such letter.

4. I deny that I was informed of the nature of the charges against my son or given an opportunity to answer on behalf of my son and my son himself was not given an opportunity to appear. I refer to item 4 of the minutes of the 2nd Board meeting of the King George V School, Seremban dated 3rd May, 1968 which reads as follows :-

10

"4. Expulsion of pupil. The Chairman asked the Board whether Mr. M.Nadchatiram should take part in the discussion as his son was involved. The Board was of the view that he should not be in the meeting for his particular item of the agenda. The Chairman then asked Mr. M. Nadchatiram to wait in the office while the item was discussed.

20

The matter was discussed in Confidence and all discussion that took part was to be classified as confidential. A report will be submitted to the Ministry by the Secretary. All papers and reports distributed were to be kept in complete confidence. It was agreed by the Board that the papers could not be made available to Mr. M. Nadchatiram.

30

Mr. M. Nadchatiram rejoined the meeting at the end of this item."

5. Para. 6 of the affidavit is denied. In view of the previous decision of the Board that I was not allowed to see any of the reports of my son, no useful purpose would have been served by remaining at the meeting. Had it been otherwise I would have either remained in spite of my illness or asked for a postponement.

40

6. Para. 7 is denied. It is not I who is vindictive and revengeful. But it is the Head Master who in order to preserve his

false notions of dignity and prestige opposes this application regardless of the disastrous effects it would have on the future of a student.

Exhibits  
Exhibit P1  
Agreed Bundle.  
Affidavit of  
M.Nadchatiram  
4th July 1968  
(continued)

10 7. With reference to the suggestion that the Plaintiff be admitted to another school he cannot be admitted to any other school in Seremban as there are no science facilities available in the other schools. He will have to go to a school outside the State of Negri Sembilan. There are no facilities for his residence and guidance if he leaves home which he has never done.

Affirmed by the M. Nadchatiram )  
at Seremban on this 4th day of ) Sgd. M.Nadchatiram  
July, 1968 at 2.50 a.m./p.m. )

Before me,

20 Sd. M. Sangarapillai  
Commissioner for Oaths  
High Court, Malaya,  
Seremban.

This Affidavit is filed by Messrs. Saraswathy Devi & Co. Solicitors for the Plaintiff whose address for service is No. 9, Cameron Street, Seremban.

SEENIVASAGAM & SONS No.7 Hale Street,  
ADVOCATES & SOLICITORS. Ipoh.

8th May, 1968.

Letter to  
Headmaster by  
M/s.  
Seenivasagam  
& Sons  
8th July 1968

30 Guru Besar,  
Sekolah Menengah Jenis Kebangsaan,  
King George V School,  
Seremban.

Sir,

re: N. Mahadevan

We are acting on instructions from Mr. M. Nadchatiram the father of the abovenamed pupil.

Exhibits

Exhibit P1  
Agreed Bundle.

Letter to Head-  
master by M/s.  
Seenivasagam  
& Sons  
8th July 1968  
(continued)

We are instructed that on the 6th instant at 8 a.m. you made an announcement in the School Assembly that you were going to expel a boy from Lower Six Science and thereafter you told the abovenamed pupil to go home as he had been expelled.

You have not hitherto notified our client of your action. Will you therefore, please confirm whether the pupil has in fact been expelled and, if so, on what grounds. 10

Our client intends to proceed under Rule 10(1) of the Education (School Discipline) Regulations, 1959 and you will appreciate that unless informed of the grounds it will not be possible to formulate the grounds of appeal.

As any delay will seriously affect the education of our client's son an immediate reply would be appreciated.

Yours faithfully,

20

Sd. Seenivasagam & Sons.

c.c.

1. The Chief Education Officer,  
Negri Sembilan,  
Seremban.
2. The Chairman,  
Board of Governors,  
King George V School,  
Seremban.

This is an exhibit marked as "AA1" in the affidavit of M. Nadchatiram dated 4th day of July, 1968. 30

Sd. M. Sangarapillai  
Commissioner for Oaths  
High Court, Malaya,  
Seremban.

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FEDERATION OF MALAYSIA  
 IN THE STATE OF NEGRI SEMBILAN  
 IN THE HIGH COURT IN MALAYA AT SEREMBAN  
CIVIL SUIT NO. 101 of 1968

Exhibits

Exhibit P1  
 Agreed Bundle.

Affidavit of  
 Mahadevan  
 5th July 1968

Between

N. Mahadevan, (an infant)  
 suing by his father and  
 next friend M. Nadchatiram                      Plaintiff

And

- 10      1. K. Anandarajan, (Headmaster)  
           King George V School,  
           Seremban.
2. The Minister for Education,  
           Malaysia.
3. Board of Governors,  
           King George V School,  
           Seremban.                                      Defendants

AFFIDAVIT

20      I, N. Mahadevan of No. 1, Jalan Atas,  
 Seremban, do hereby affirm and state as  
 follows :-

1. I am the Plaintiff in this civil suit.
2. I refer to para 3 of the 1st Defendant's  
 undated Affidavit and wholly deny the contents  
 thereof as follows :-

- (i) I showed this affidavit to my father  
 who denied he received a telephone  
 call from Headmaster as to my bad  
 character.
- 30      (ii) I have never defied the School  
 Prefects Board.
- (iii) I have never come late to school.  
 If I did I would not be able to enter  
 the school as the gates are shut at  
 7.30 a.m. by the school prefects.
- (iv) I was never rude to any teachers.  
 This allegation is vague and dis-  
 closes no particular teacher, time,

Exhibits

Exhibit P1  
 Agreed Bundle.  
 Affidavit of  
 Mahadevan  
 5th July 1968  
 (continued)

or incident neither have I been reprimanded for this.

- (v) I was never indifferent to my school work.
- (vi) I admit my sister Datin Seenivasagam went to see the 1st Defendant as I had complained to her that I was punished by the Head Prefect for not wearing a badge. The badge was in fact in my shirt pocket but I had forgotten to pin it. I was punished to pick rubbish around the school compound for 1 week. I obeyed the school prefect and picked rubbish for 2 days but felt embarrassed and humiliated as I had to do this during recess and the lower form pupils stood there and laughed. I complained to Mr. Ung Tat Hean the Asst. Headmaster. He refused to listen to me and said "get lost".

10

20

- (vii) My brother J. Nadchatiram went to see the Headmaster with one Jane Tong to reinstate one Allen. The Headmaster discussed me annexed herewith and marked "AA2" is the joint affidavit of my brother and Mrs. Jane Tong dated 25th day of May, 1968.

2. I refer to para 4 and state that the leaving certificate granted to me did not disclose in any way the grounds for expulsion. I verily believe that I have a right to be educated. I had genuinely worked hard and satisfied the requirements to be admitted to the Lower Science Form (VI). I am advised and believe that my expulsion as a pupil from the said school was made in violation of the principle of natural justice, resulting in gross injustice being done to me.

30

40

3. I refer to para 5 of the Affidavit I wish to state that about 210 students sat for the Cambridge School Certificate in 1967. Only about 29 students obtained a Grade I from the said school. I was one of them.

In the entrance examination for Form (VI) about 80 students appeared for the examination and only about 30 obtained admission to the Lower Form (VI) Science Stream and again I was one of them. I had thus qualified adequately to be in the class I am.

Exhibits  
Exhibit P1  
Agreed Bundle.  
Affidavit of  
Mahadevan  
5th July 1968  
(continued)

10 4. I refer to para 6 of the affidavit and maintain that the Headmaster was actuated by malice in that he resented a report I have made to the police against him in good faith and following the advice of my brothers who were guided me. The malice is further evidenced by the fact that the Headmaster admits in this paragraph that the decision to expel me was first made by the Headmaster. He sought the reports of the Form teacher to substantiate his decision. I verily believe this decision to expel me was not as a result of any voluntary complaints  
20 against me from the teachers or otherwise.

30 5. With reference to para 7 misbehaviour at the talentime is expressly denied. The two other boys who were questioned was one Kim Swee and one Vijayapal. It is denied that one of the boys was suspended. Kim Swee and Vijayapal were monitors in their respective classes and they were elected as monitors by their class pupils. When the police report was lodged and when Kim Swee swore an affidavit in my favour he was  
victimized and he told me that he was threatened by the Headmaster to be expelled and stripped of his monitorship by the Headmaster personally. Vijayapal was stripped of his monitorship by his form master Tan Lam Nee.

40 6. I refer to para 8 and state that the girls and boys were caned and not merely given light taps on the palms. The girls voluntarily gave written statements to my brother J. Nadchatiram of Nadchatiram Brothers, Advocates & Solicitors. The defendant No. 1 has frequently made it known that he claims arbitrary powers to expulsion and as a result of this students feel compelled to bow to his wishes even to the extent of making false allegations and withdrawing statements previously made by them.



Exhibits  
 Exhibit P1  
 Agreed Bundle.  
 Affidavit of  
 Mahadevan  
 5th July 1968  
 (continued)

7. With reference to para 10 I maintain that I was expelled because I lodged a police report. I only lodged the report on the 10th May, 1968. This matter was first reported to the C.E.O by my brother and sister but no action appeared to have been taken I was advised by them that it would be advisable for me to lodge a police report and I acted on their advice as they are both advocates & Solicitors.

10

8. With reference to para 11 I deny I left the school without permission on the 2.4.1968. I was feeling very ill and giddy and I was sitting in the Hall of the school as the Headmaster had refused to allow me to return home. I admit I left school on the 10th April, 1968 without any permission but this was on an exhibition day when classes were not actually sitting. Even the library was closed and it was only those who were actually concerned with the running of the exhibition and anything to do on that day. There were many students who left the school. The headmaster saw many of us leaving the school but did not attempt to stop us. However so far as I am aware on the next day he picked three of us i.e. Kim Swee, Vijayapal and myself and demanded a written confession to be written in his presence and with his red ballpoint pen which I did.

30

9. I refer to para 12 and state that the defendant No. 1 was not justified in expelling me.

10. With reference to the exhibit B1 and B2 do not know why Mr. Ung Tat Hean had to write such a report against me. As to the incidents (1), (2) and (3) referred to in his statement it was an innocent friendship for the purpose of study only. If the door was closed it would have been for one purpose only, to prevent interruption and disturbance of studies by others who were not interested in similar studies. In any event I have no doubt whatsoever that all the windows were open. The girl referred to was a Form VI Upper Science girl by the name of Norliah bte Haji Ahmad, who was then a Form VI upper science student who was

40

Exhibits

Exhibit P1  
Agreed Bundle.

Affidavit of  
Mahadevan  
5th July 1968

(continued)

10

assisting me with my studies i.e. Additional Maths which subject I did very well in the Cambridge Examination on which I obtained a Grade I Certificate. This was just before the examination. The girl referred to now is a undergraduate of the University. The previous headmaster who had given permission to study on the class room after class hours imposed no conditions as to whether the doors should be closed and locked or not. I believe that this incident was brought to the notice of the previous headmaster who decided not to take any action in the matter. I attach herewith an affidavit of hers and marked "AA3".

20

11. I refer to exhibit B2. This is a report from my Form Master. He has only taught me for 3 months and it was not fair for him to come to such a conclusion in so short a time. Furthermore in view of his American accent I found it a little difficult to grasp the accent.

12. I am advised that in view of the very short time available to answer the affidavit filed yesterday by the headmaster, it is not possible to refer to and explain each and every allegation against me. However I am advised that the allegations are of so trivial a nature that they would not in any event justify my expulsion.

30

13. I pray I be reinstated in the King George V School, Seremban.

Affirmed by the abovenamed )  
N. Mahadevan in Kuala )  
Lumpur on this 5th day of )  
July, 1968, at a.m. )

Before me,

Sd:

40

This Affidavit is filed by Messrs.  
Saraswathy Devi & Co., Advocates & Solicitors,  
Solicitors for the Plaintiff whose address  
for service is No. 9, Cameron Street, Seremban.

Exhibits

EXHIBIT AA2

Exhibit P1  
Agreed Bundle

AFFIDAVIT

Joint Affidavit  
of J. Nadchatiram  
& Madam Jane Tong  
May, 1968.

We, J. Nadchatiram an Advocate and  
Solicitor residing at No. 1 Jalan Atas,  
Seremban and practising at No. 133, Jalan  
Paul, Seremban and Madam Jane Tong Nee  
Chan Wan Ying residing at No. 100 Hose  
Road, Seremban of full age affirm and say  
as follows :-

1. On or about the 3rd day of April, 1968, 10  
Allen Tong a pupil of Form VI (Lower) Science  
King George V School, Seremban was suspended  
and the Headmaster Mr. K. Anandarajan (here-  
inafter referred to as the Headmaster) of the  
school had sent for his mother, Madam Jane  
Tong Nee Chan Wan Ying to see him.

2. We, Madam Jane Tong Nee Chan Wan Ying  
who is the mother of Allen Tong and Mr. J.  
Nadchatiram called on the Headmaster on the  
same day at or about 12 noon. 20

3. The Headmaster informed us that Allen  
Tong was suspended from school for certain  
reasons and after our representations and  
further enquiries the Headmaster was satisfied  
that Allen Tong had vindicated himself and  
the Headmaster has now reinstated him.

4. On this occasion the Headmaster did  
inform us that Mahadevan s/o Nadchatiram  
also a pupil of Form VI (Lower) Science  
King George V School was one of good 30  
character and that he had made inquiries from  
all the teachers who had taught Mahadevan was  
an industrious and well behaved pupil and who  
always wished the teachers "Good Morning" or  
"Good Afternoon". according to the circum-  
stances and was always respectful to them.

Affirmed by the abovenamed )  
J.Nadchatiram and Madam Jane )  
Tong Nee Chan Wan Ying at ) Sd.  
Seremban this day of )  
May, 1968 at a.m./p.m. ) Sd. 40

Before me,  
Sd.  
Commissioner for Oaths.

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FEDERATION OF MALAYSIA  
IN THE STATE OF NEGRI SEMBILAN  
IN THE HIGH COURT IN MALAYA AT SEREMBAN  
CIVIL SUIT NO. 101 of 1968

Exhibits

Exhibit P1  
Agreed Bundle.

Affidavit of  
Norliah bte.  
Haji Ahmad  
4th July 1968

Between

N. Mahadevan, (an infant)  
suing by his father and  
next friend M. Nadchatiram                      Plaintiff

And

- 10      1. K. Anandarajan, (Headmaster)  
            King George V School,  
            Seremban.
2. The Minister for Education,  
            Malaysia.
3. Board of Governors,  
            King George V School,  
            Seremban.                                      Defendants

AFFIDAVIT

20      I, Norliah bte. Haji Ahmad of full  
age, affirm and state as follows :-

1. I am studying at the University of  
Malaya for the Bachelor of Science Degree  
(1st year).
2. I have read through Mr. Ung Tat Hean's  
undated report attached in the said Head-  
master's Affidavit dated 4th July, 1968 on  
the subject of N. Mahadevan.
- 30      3. With reference to the 3rd paragraph of  
Mr. Ung's report I wish to state that I was  
the Malay girl referred by him and at that  
time studying in Form 6 Upper Science at  
King George V School, Seremban and residing  
at the Malay Girls' Hostel, Seremban.
4. With reference to Mr. Ung Tat Hean's  
incident No. (1) I wish to state that  
Mahadevan was studying Additional Mathematics  
and I was assisting him in one of the class-  
rooms of the School. Mr. Ung opened the  
door. Mahadevan greeted him and Mr. Ung

Exhibits

Exhibit P1  
Agreed Bundle.

Affidavit of  
Norlish bte.  
Haji Ahmad  
4th July 1968

(continued)

replied his greeting and closed the door himself and went away. I deny that we were studying chemistry on that day nor did we sit in an adjoining chair. I was sitting at an angle in a separate chair and teaching Mahadevan Additional Mathematics in particular Trigonometry. I also deny that Mr. Ung told us that we could remain in the classroom provided we kept the doors open. In fact, he made no comments other than reply Mahadevan's greeting.

10

5. With reference to the incident No. (2) I was again the girl in question. I was again teaching Mahadevan Additional Mathematics We were busy studying when I heard two knocks at the door. Mahadevan opened the door immediately. This time Mr. Ung asked us what we were doing and I told him we were studying Additional Mathematics. Mahadevan was preparing for his school certificate examination and I helped him. I am pleased Mahadevan passed his Additional Mathematics with a strong credit. I informed Mr. Ung then that I wanted the door to be closed so that other student passing by would not interrupt us. I deny that we deliberately locked the door. The handle to the lock of the door was broken on the outside. And when I shut the door it automatically locked. I was not aware of this till Mr. Ung knocked at the door. The shutters were opened. There was a class in progress in the next room. The partition that divided the two classrooms was a simple folding wooden door and could be opened from either side. I was not aware that the key holes were plugged. Mr. Ung neither reprimanded us nor was he angry with us. There was no persistent banging on the door as claimed by Mr. Ung.

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6. With reference to incident No. (3) Mahadevan came to the common room of my hostel a day before his Physics practical exam for the Cambridge School Certificate to borrow my Physic book. He came in his father's car with his driver. I absolutely deny there was any misbehaviour in the compound of my hostel. He visited me at about 10.30 in the morning and there were many girls (student) around.

50

7. I am indeed surprised at the comments made by the Mr. Ung with reference to these incidents and the character of Mahadevan. I am and was at all material time engaged to be married. My fiance also knows Mahadevan and we both think well of him.

8. Mahadevan is 17 years of age. I am 21 years old now and four years his senior.

10 9. I note with regret that Mr. Ung, a senior assistant Headmaster could stoop so low as to read meaning into the good services I have done with good intentions to a fellow student. Mahadevan is a bright student. This I discovered from a few tuition I had given him and I feel that he could be allowed to continue his studies in the same school.

20 Affirmed by the abovenamed )  
deponent at Kuala Lumpur on ) Sd.  
4th day of July, 1968 )  
at 4.15 p.m. )

Before me,

Sd:

This Affidavit is filed by Messrs. Saraswathy Devi & Co. Solicitors for the Plaintiff whose address for service is No. 9, Cameron Street, Seremban.

EXHIBIT P2

30 Talipon: S'ban 3598 Sekolah Menengah  
Surat Kita: (6) in Jenis Kebangsaan  
K.G.V. King George V  
Seremban  
Sec.8/3/64/SJI 8th May 1968

Exhibits

Exhibit P1  
Agreed Bundle.

Affidavit of  
Norlish bte.  
Haji Ahmad  
4th July 1968

(continued)

Exhibit P2

Letter from  
Headmaster  
8th May 1968

REGISTERED:

Mr. N. Nadchatiram,  
1 Jalan Atas,  
Rahang Square,  
Seremban.

Exhibits

Subject N. Mahadevan

Exhibit P2  
Letter from  
Headmaster  
8th May 1968  
(continued)

Your son has been expelled from school with effect from 4th May 1968.

If you wish to appeal, you can do so to the Board of Governors within a month from this date.

Your son's leaving Certificate will be forwarded to you in due course.

Sgd. K. Anandarajan  
Guru Besar,  
Sekolah Menengah Jenis  
Kebangsaan,  
King George V,  
Seremban.

10

CLY/VC

Exhibit P3  
Leaving  
Certificate  
4th May 1968

EXHIBIT P3

L/Cert. No.143/68.

LEAVING CERTIFICATE  
KING GEORGE V SCHOOL SEREMBAN

Name of pupil: N. Mahadevan  
Name of Father/Guardian: M. Nadchatiram  
School Number: 6573 Identity Card No.3998527  
Date of birth: 30/7/50 Place: Seremban  
BC/SD: BC  
Date of Admission: 14/1/63 Form to which  
admitted: Form one  
Name of former school (if any): King George  
V (Primary) School  
Date of leaving present School: 4th May 1968  
Reason for leaving: Expelled under Education  
(School Discipline) Regulations, 1959  
Highest Form passed (in words): Form Five  
Year: 1967  
In what Form at time of leaving (in words):  
Form Six Lower Science  
Free place authority (with category):.....  
Fees due \$.... Attendance during School Year:  
57/64  
Extra Mural Activities:..Nil.....  
.....

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201.

Remarks on Conduct and Academic record:  
Childish The attitude of this student as well as his behaviour have indicated that he has no desire to do at school what is expected of students at his level.

Signature of pupil:.....Sd:  
Headmaster,  
KING GEORGE V SCHOOL,  
SEREMBAN

Exhibits  
Exhibit P3  
Leaving  
Certificate  
4th May 1968  
(continued)

10 Date: 4th May, 1968

This is the Exhibit marked "A1" referred to in the Affidavit of M. Nadchatiram, affirmed on the 13th day of June, 1968.

Before me:

Sd: M. Sangarapillai  
Commissioner for Oaths,  
High Court, Malaya,  
Seremban.

20

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EXHIBIT P4

M. NADCHATIRAM,  
1, Jalan Atas,  
Seremban.  
7th May, 1968

Exhibit P4  
Letter to  
Chairman by  
M.Nadchatiram  
7th May 1968

The Chairman,  
Board of Governors,  
King George V School,  
Seremban.

Dear Sir,

30

My son Mahadevan who was in Form VI (Lower) Science has informed that he was expelled from school on 6.5.1968.

I invoke Rule 10(1) of the Education (School Discipline) Regulations, 1959, and hereby kindly request the Board to enquire into the matter.

Yours faithfully,

Sd: M. Nadchatiram

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202.

Exhibits

EXHIBIT P5

Exhibit P5

Appeal to Board  
of Governors by  
M. Nadchatiram  
8th May 1968

M. Nadchatiram,  
No.133, Paul Street,  
Seremban.  
8th May, 1968.

The Chairman,  
Board of Governors,  
Sekolah Menengah Jenis Kebangsaan,  
King George V School,  
SEREMBAN.

10

Sir,

I hereby appeal to the Board of Governors  
against the expulsion of my son N. Mahadevan  
a pupil in Form 6 Lower Science on the 6th  
May, 1968.

I further give notice that I wish to  
be present personally at the meeting  
of the Board of Governors called to  
consider the appeal and in order to  
enable me to do this I require adequate  
notice of the meeting.

20

Will you also please direct that I  
be supplied with the grounds of expulsion  
so that I may submit my grounds of appeal.

Yours faithfully,  
Sd: M. Nadchatiram

Exhibit P6

EXHIBIT P6

Letter to  
Headmaster by  
M/s. Seenivasagam  
& Sons  
8th May 1968

8th May 1968

Guru Besar,  
Sekolah Menengah Jenis Kebangsaan,  
King George V School,  
Seremban.

30

Sir,

re: N. Mahadevan

We are acting on instructions from

Mr. M. Nadchatiram the father of the abovenamed pupil.

Exhibits  
Exhibit P6  
Letter to  
Headmaster by  
M/s. Seenivasagam  
& Sons  
8th May 1968  
(continued)

We are instructed that on the 6th instant at 8 a.m. you made an announcement in the School Assembly that you were going to expel a boy from Lower Six Science and thereafter you told the abovenamed pupil to go home as he had been expelled.

10 You have not hitherto notified our client of your action. Will you therefore, please confirm whether the pupil has in fact been expelled and, if so, on what grounds.

Our client intends to proceed under Rule 10(1) of the Education (School Discipline) Regulations, 1959 and you will appreciate that unless informed of the grounds it will not be possible to formulate the grounds of appeal.

20 As any delay will seriously affect the education of our client's son an immediate reply would be appreciated.

Yours faithfully,

Sgd. S.P. Seenivasagam

c.c.

1. The Chief Education Officer,  
Negri Sembilan,  
Seremban.
  2. The Chairman,  
Board of Governors,  
King George V School,  
Seremban.
- 30
-

204.

Exhibits

Exhibit P7  
Letter by  
M.Nadchatiram  
29th May 1968

EXHIBIT P7

M.Nadchatiram,  
No. 1, Jalan Atas,  
Seremban.  
29th May, 1968.

To: All Members of the Board of Governors.

Dear Sirs,

Expulsion - N. Mahadevan.

1. I wish to refer to paragraph 4 of the minutes of the meeting of 3rd May, 1968 which should be amended as follows :- 10

4. "Expulsion of pupil. At the request of the Secretary, who is also the Headmaster, the Chairman asked the Board etc. and after the last sentence should add "Mr. Nadchatiram after protest left the meeting."

At this meeting the expulsion was discussed in confidence and all discussion that took place was to be classified as Confidential. It was also agreed that "all papers and reports distributed were to be kept in complete confidence." It was also agreed by the Board that "The papers could not be made available to Mr. Nadchatiram, and "a report will be submitted to the Ministry by the Secretary." 20

When I rejoined the meeting I was informed by the Chairman that the subject of expulsion will be discussed again on 7.5.68. 30

2. On the morning of the 6th May, 1968 at the Assembly in the King George V School Hall the Headmaster had announced that he is going to expel a student and there- after he called N. Mahadevan to his room and told him, "You have been expelled." When Mahadevan asked him for the reason for expulsion, he was told "Get out - I am telling you that you have been expelled 40

that is enough." He replied "Thank you, good morning Sir" and went home. On the 6th May, at about 1.30 p.m. I phoned the Chairman at the Persedengan Belio Club and informed him of the expulsion. He requested me not to attend the meeting on 7th May, 1968 and he would enquire into the matter. For the meeting on 7th May, 1968, I stayed away at the request of the Chairman. This should be stated when the minutes are written.

Exhibits  
Exhibit P7  
Letter by  
M.Nadchatiram  
29th May 1968  
(continued)

On the 8th May, 1968 Mr. Nadchatiram received the following letter from the Headmaster:

"Your son has been expelled from school with effect from 4th May, 1968.

If you wish to appeal, you can do so to the Board of Governors within a month from this date. Your son's leaving certificate will be forwarded to you in due course."

3. I received the Leaving Certificate dated "4.5.68". Reason for leaving - "Expelled under Education (School Discipline) Regulations, 1959." Conduct and Academic record - "Childish. The attitude of this student as well as his behaviour have indicated that he has no desire to do at school what is expected of students at this level."

4. At the Board meeting held on 14.5.68 to discuss letters and Summons received by the Headmaster, I protested that such discussion was out of order as the Summons was for Criminal Action against the Headmaster and the Board should not get involved in Criminal Actions and that the Board should confine its enquiries to the expulsion only and if it confirms the expulsion Mahadevan might go abroad for higher studies. The Headmaster as Secretary stated "The Ministry has written to Embassys and High Commissions not to allow." When the Chairman stopped him from proceeding further - but I completed the sentence, "Not to allow Mahadevan to

Exhibits

Exhibit P7

Letter by  
M.Nadchatiram  
29th May 1968  
(continued)

proceed abroad for higher studies" and even repeated the sentence in full at that meeting and it was surprising that minutes of the meeting of 14th May, though postponed for the 20th May in order to get a ruling from the Legal Adviser about discussing the letters and summons received by the Headmaster was not made available.

5. On the 15th May the Secretary circulated a letter stating that the emergency meeting for the 20th May will :- Agenda. "To discuss procedure to consider the appeal of Mr. Nadchatiram. The meeting fixed for the above date and time to discuss letters and summons received by Headmaster has been dropped." 10

6. Procedure to consider appeal.

On the 20th May meeting there were two suggestions by Mr. Yong Sze Lin Barrister-at Law and Mr. Nadchatiram. 20

(a) Mr. Yong Sze Lin: The Board to consider written submission from Headmaster and Mr. Nadchatiram as father of Mahadevan.

(b) From Mr. Nadchatiram:- that as Mahadevan was only a student and the Headmaster a man of learning (B.A.Honours) and of great influence the student cannot represent his case sufficiently to exonerate himself and so should be allowed to be represented by a counsel. This suggestion was supported by Dr. Mohd. Noor and the Hon'ble Haji Sulaiman. 30

The Chairman stated that he was not aware of precedents to act and so he will consult the Ministry and the meeting to consider the expulsion was postponed to 27th April, 1968. 40

7. As the Chairman did not inform what procedure will be adopted at the meeting on the 27th May to Mr. Nadchatiram as

the father of the expelled student he submitted a written defence and Mahadevan sent his counsel to appear before the Board Meeting on the 27th on his behalf - as he by expulsion was debarred from entering the school compound.

Exhibits  
Exhibit P7  
Letter by  
M.Nadchatiram  
29th May 1968  
(continued)

10 8. During discussion on the procedure Mr. Yong Sze Lin, stated that he would object to any lawyer appearing on behalf of the student. He is an eminent and experienced lawyer and the Board accepted his advice. The written appeal by the parent was considered too long for the Board to decide and the meeting was postponed for to-day 29th May, 1968.

9. I would therefore request the Board to consider:

20 (a) In view of the fact that all the Board Members are in possession of papers and reports of Mahadevan supplied by the Headmaster and these were not made available to the student - how does the Board expect him to defend his expulsion.

30 (b) (i) Since the Secretary has been authorised by the Board to submit a report to the Ministry and since the Chairman had stated at this meeting on the 27th May that he himself had not read the report sent to the Ministry.

40 (ii) Since the Secretary had disclosed that the Ministry had written to Embassies and High Commissions about Mahadevan was it in order for the Secretary cum Headmaster to write to the Ministry and not disclose the contents to the Board.

(iii) Has the Headmaster the power to write to the Ministry direct and to receive replies over the Chief Education Officer, as this is an infringement of

Exhibits

Exhibit P7

Letter by  
M.Nadchatiram  
29th May 1968  
(continued)

General Orders and request the Board should check into this matter.

(c) The Expulsion Certificate is dated 4th May, 1968. Since the Board was in possession of papers and reports of the Headmaster and the latter was ordered to submit a report to the Ministry on Mahadevan's misconduct subsequent meeting 10 held was only to confirm that the Headmaster was right in expelling Mahadevan whereas after the meeting on the 3rd May the Chairman and others assured me that Mahadevan's expulsion will be considered on the 7th May - why should the Chairman and other members mislead me.

(d) On the 8th May, the Headmaster writes to Mr. Nadchatiram "Your son has been expelled from school w.e.f. 4.5.68. If you wish to appeal you can do so to the Board of Governors within a month from this date." What are the charges? 20

10. The Members of the Board are responsible men. They are also fathers. They represent all walks of life. Some are lawyers, doctors, civil servants and men with varied experiences. They write to the father of Mahadevan and say your son has been expelled - appeal to the Board of Governors. They have met :- 30

(i) To hear the Chairman confirm the expulsion by the Headmaster.

(ii) They have met to consider letters and criminal Summons received by the Headmaster.

(iii) They have met to discuss the procedure to be adopted to consider the appeal. 40

(iv) They have met and refused the student to be represented by Counsel.

(v) The Headmaster is a very influential man. (He has stated at a meeting that the Minister visited his house). Some members of the Board have children learning in the school and therefore they are selfish, or they fear the Headmaster. Yet some have children to admit in the school in the future. Some are the Headmaster's friends. So to these Board members - Justice to Hell. My interest first.

10

(vi) Members of the Board if I hurt you as in (v) above. I am sorry - but I maintain it.  
Reason:

(i) All along you have heard the Headmaster and have supported him.

20

(ii) I am a member of the Board. I have a right by law and by Constitution to be informed of whatever has happened at Board meetings.

(iii) My honesty and integrity has been put to doubts as a member of the Board.

(iv) You are reluctant to hear the defence. Your minds are prejudiced. You have not cared to call the Student to face the Headmaster and to rebut charges.

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(v) The Leaving Certificate is false as it does not disclose facts.

(vi) You do not realise that you are blasting the future of a brilliant student - Yet all of you are FATHERS and your children call you "PAPA", "DADDY".

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Exhibits  
Exhibit P7  
Letter by  
M.Nadchatiram  
29th May 1968  
(continued)



210.

Exhibits  
Exhibit P7  
Letter by  
M.Nadchatiram  
29th May 1968  
(continued)

(vii) You want Mahadevan and his father to appeal.. How do you expect them to appeal. WHAT ARE THE CHARGES AGAINST THE STUDENT.

Yours faithfully,

Sd.  
(M.NADCHATIRAM)  
Member,  
Board of Governors,  
King George V School, Seremban.

10

c.c.

The Permanent Secretary to  
the Minister for Education,  
States of Malaysia,  
Kuala Lumpur.

The Chief Education Officer,  
Negri Sembilan,  
SEREMBAN.

Exhibit P8  
Letter to  
M.Nadchatiram  
by Chairman  
1st June 1968

EXHIBIT P8

Talipon: S'ban 298  
Sekolah Menengah Jenis  
Surat Kita: Kebangsaan  
(20) in King George V  
K.G.V.Sec. Seremban  
8/2/64  
SJ.1.

20

Surat Tuan:  
SULIT.

Mr. M. Nadchatiram,  
No. 1, Jalan Atas,  
Rahang Square,  
Seremban.

30

The Board after having heard the case put up by the Appellant, (Mr. M. Nadchatiram) and the Headmaster, and having discussed the matter at considerable length is of the unanimous opinion that:-

(a) the action taken by the head-  
master is fully justified, and

211.

- (b) the Board recommends to the Register that the boy be readmitted to another school in view of the boy being young.

Sgd. X  
(Chairman)  
Board of Governors,  
King George V Sec. School,  
Seremban.

Exhibits  
Exhibit P8  
Letter to  
M.Nadchatiram  
by Chairman  
1st June 1968  
(continued)

10

c.c.

1. The Permanent Secretary,  
Ministry of Education,  
Kuala Lumpur.
2. The Chief Education Officer,  
Negri Sembilan,  
Seremban.

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EXHIBIT P9

IN THE MATTER OF MAHADEVAN s/o NADCHATIRAM  
A PUPIL OF KING GEORGE V SCHOOL, SEREMBAN

PETITION OF APPEAL

Exhibit P9  
Petition of  
Appeal to  
Board of  
Governors.  
25th May 1968

20

To:

The Board of Governors,  
King George V School,  
Seremban.

I, M. Nadchatiram, the father of N. Mahadevan being dissatisfied with the decision conveyed to me by the Headmaster, King George V School, Seremban, in his letter of the 8th May, 1968, hereby submit my grounds against the expulsion of my said son N. Mahadevan hereinafter referred to as the said pupil:-

30

1. The grounds advanced by the Headmaster in the School Leaving Certificate of the Student reads, "Childish. The attitude of this student as well as his behaviour have indicated that he has no desire to do at school what is expected of students at his level." It is submitted that such a finding is not by

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Exhibits  
 Exhibit P9  
 Petition of  
 Appeal to Board  
 of Governors.  
 25th May 1968  
 (continued)

itself a valid and sufficient ground for the Headmaster to exercise his discretionary powers of expulsion conferred on him under Rule 8 of the Education (School Discipline) Regulations 1959 (hereinafter referred to as the said regulations).

2. He erred in fact and in law in holding that under Rule 8 of the said regulations he could expel a pupil for childishness and inefficiency in his studies. 10

On the contrary the Headmaster failed to take into consideration the fact that the student had a meritorious school career, for he had not only obtained a Grade I in the Senior Cambridge Examinations held in November, 1967 but had also qualified himself to undergo studies in Form VI by having successfully appeared in a keen competitive Form VI entrance examination held in September, 1967. The said pupil had actively partaken in extra mural activities in the school, examples of which are as follows :- 20

- (i) In 1966 he took a leading role in the school play "Androcles and the Lion" written by Bernard Shaw which brought in much revenue for the school;
- (ii) for three consecutive years, 1965/1966/1967, he was the school champion in chess; 30
- (iii) in 1967 he was the school draughts champion;
- (iv) the report cards showing the said pupil's attainment in studies and also showing his conduct did not contain any adverse report on the said pupil but on the contrary showed that the said pupil was one with good conduct. 40

3. I repeat my averments in para 2 above and respectfully submit that the remarks of the Headmaster as contained in the school leaving certificate does not disclose the

true aspects of the capabilities of the pupil and is false mischievous and calculated to mislead the Board.

10 4. I annex hereto a joint Affidavit affirmed on the 23rd day of April, 1968 by Mr. J. Nalchatiram and Madam Jane Tong which said affidavit discloses that on the 4th April, 1968, the said pupil was considered by the Headmaster to be above board in so far as his character, conduct and scholastic aptitudes was concerned.

20 5. Between the 4th April, 1968 and the 6th May, 1968, the greater part of which was school holidays, the conduct of the said pupil was beyond reproach. There is no doubt that the Headmaster could not have found any fault with the said pupil during the school holidays. The conduct of the Headmaster in expelling the said pupil on the first day of the re-opening the school is beyond comprehension.

30 6. The Headmaster on having learnt that the said pupil had lodged a police report on the 10th of April, 1968 (a copy of which is attached hereto and marked "C") paid great importance to this report for the report went into the root of what he had done and practised at school and to quell the situation expelled the said pupil so that the said pupil may not be in a position to collect facts (only available from other pupils) to support his case.

40 7. I submit that it would not be impertinent to bring to the notice of the Board that the Headmaster is one who flagrantly flouts the Education laws. I further submit that the Headmaster does not appear to understand the implication and interpretation of the Education Laws. Had he so understood the laws he certainly would not have inflicted corporal punishments on girl pupils which is forbidden by Rule 5(1)(a) of the said regulations. I have evidence in my possession to the effect which I shall make available to the Board.

Exhibits

Exhibit P9

Petition of  
Appeal to Board  
of Governors.  
25th May 1968

(continued)

Exhibits  
 Exhibit P9  
 Petition of  
 Appeal to Board  
 of Governors.  
 25th May 1968  
 (continued)

8. I have in my possession a circular issued after the coming into force of the said Regulation by a Senior and Prominent Officer of the Education Department which enumerates the steps that had to be taken before a pupil is expelled.

1. The pupil as well as the parent should be warned in writing as to the nature of the offence or misconduct of the pupil, and a reply slip should be attached so that the parent may acknowledge receipt of your letter of warning. 10
  2. If the conduct of the pupil has not improved after a period of time, a second written warning should be sent to the parent.
  3. The third and final warning should place emphasis on the fact that if the pupil misbehaved again then he or she would be expelled from school. 20
  4. A copy of all such warnings to parents or guardians of the pupil should be extended to me.
  5. In extreme cases where offences or misconduct merit expulsion without warning (Cases such as extortion, serious intimidation and terrorisation of pupils), heads of schools may use their discretion to expel pupils from the school forthwith. 30
- Had the Headmaster adopted this procedure the question of expulsion of the said pupil would not have arisen.
6. After the pupil has been expelled from the school, the parent/guardian should also be informed that he/she may appeal to the Board of Managers/Governors against the decision. 40

9. The Headmaster, having had a doubt in his mind as to whether he should expel the said pupil or not and after having brought the matter to the Board of Governors was premature in expelling the student before the Board could arrive at a decision.

Dated this 25th day of May, 1968.

Sd: M. Nadchatiram.  
M. Nadchatiram

Exhibits  
Exhibit P9  
Petition of  
Appeal to Board  
of Governors.  
25th May 1968  
(continued)

10

L/Cert. No. 143.68

LEAVING CERTIFICATE  
KING GEORGE V SCHOOL SEREMBAN

Exhibit P9  
Exhibit "A"  
to Petition of  
Appeal to Board  
to Governors.  
25th May 1968

Name of pupil: N. Mahadevan  
Name of Father/Guardian: M. Nadchatiram  
School Number: 6573 Identity Card No.  
3998527  
Date of birth: 30/7/50 Place: Seremban  
BC/SD: BC  
Date of admission: 14/1/63 Form to which  
admitted: Form One  
Name of former school (if any): King George  
V (Primary) School  
Date of leaving present School: 4th May 1968  
Reason for leaving: Expelled under Education  
(School Discipline)  
Regulations, 1959  
Highest Form passed (in words): Form Five  
Year: 1967  
In what Form at time of leaving (in words):  
Form Six Lower Science  
Free place authority (with Category): -  
Fees due \$ - Attendance during School  
Year: 57/64  
Extra Mural Activities: Nil  
Remarks on Conduct and Academic record:  
Childish. The attitude of this student as  
well as his behaviour have indicated that  
he has no desire to do at school what is  
expected of students at his level.

20

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Exhibits

Exhibit P9  
Exhibit "A"  
to Petition of  
Appeal to Board  
of Governors  
25th May 1968  
(continued)

Signature of pupil: .....

Sd: .....

HEADMASTER,  
KING GEORGE V SCHOOL,  
SEREMBAN.

Date: 4th May, 1968

EXHIBIT "A"

Exhibit "B"  
to Petition of  
Appeal to Board  
of Governors  
25th May 1968

A F F I D A V I T

We, J. Nadchatiram an Advocate  
and Solicitor residing at No. 1 Jalan Atas, 10  
Seremban and practising at No. 133, Jalan  
Paul, Seremban and Madam Jane Tong Nee  
Chan Wang Ying residing at No. 100 Hose  
Road, Seremban, of full age affirm and  
say as follows :-

1. On or about the 3rd day of April,  
1968 Allen Tong a pupil of Form VI (Lower)  
Science King George V School, Seremban was  
suspended and the Headmaster Mr. K.  
Anandarajan (hereinafter referred to as 20  
the Headmaster) of the school had sent  
for his mother, Madam Jane Tong Nee  
Chan Wan Ying to see him.

2. We, Madam Jane Tong Nee Chan Wan  
Ying who is the mother of Allen Tong and  
Mr. J. Nadchatiram called on the Head-  
master on the same day at or about 12 noon.

3. The Headmaster informed us that  
Allen Tong was suspended from school for  
certain reasons and after our representations 30  
and further enquiries the Headmaster was  
satisfied that Allen Tong had vindicated  
himself and the headmaster has now re-  
instated him.

4. On this occasion the headmaster did  
inform us that Mahadevan s/o Nadchatiram  
also a pupil of Form VI (Lower Science King  
George V School was one of good character  
and that he had made inquiries from all the

teachers who had taught Mahadevan and Allen Tong and that he was satisfied that N. Mahadevan was an industrious and well behaved pupil and who always wished the teachers "Good Morning" or "Good Afternoon" according to the circumstances and was always respectful to them.

Exhibits  
Exhibit P9  
Exhibit "B"  
to Petition of  
Appeal to Board  
Of Governors  
25th May 1968  
(continued)

10 Affirmed by the abovenamed  
J. Nadchatiram and Madam  
Jane Tong Nee Chan Wang Ying  
at Seremban this 25th day of  
May, 1968 at a.m./p.m. )  
Sd: J. Nadchatiram  
Sd: Jane Tong

Before me,  
Sd: Sangarapillai  
Commissioner for Oaths,  
High Court, Seremban.

EXHIBIT "B"

20 PRAECIPE NO. 1138/68  
Fee Paid \$1/-  
Date 25/5/68  
Sd:

POLICE REPORT NO: 1583/68

Name: Mahadevan s/o Nadchatiram  
Sex: Male  
Age: 17 years  
Address: No. 1 Jalan Atas, Seremban.  
Occupation: Student.

Exhibit "C"  
to Petition of  
Appeal to Board  
of Governors  
25th May 1968

30 I am a student in King George V  
School, Seremban, and am in Form VI Lower  
(Science Stream).

On 2.4.68 at about 10.10 a.m. I was  
in the school tuck shop. The Headmaster  
of the school named Mr. Anandarajan walked  
up to me and said that I and a few of my  
friends will be suspended and Allen Tong  
will be expelled. At 11.10 a.m. on 2.4.68  
I was told to come to his office together  
with Ng Kim Swee and Vijayapal.

Just as we were standing in front



Exhibits

Exhibit P9

Exhibit "C"  
to Petition of  
Appeal to Board  
of Governors  
25th May 1968

(continued)

of the Headmaster's table he (the Headmaster) took a knife that had a blade of about three inches long, pointed it at us and said "at the rate you fellows are going, you are all going to find this knife stabbed in your back."

He then sent off the other two boys out of his room and questioned me relating to events that took place on 29.3.68 at about 7.30 p.m. at a talent show held at the Town Hall, Seremban. He falsely accused me of having misbehaved at the Town Hall and said that I had bought a \$1/- ticket and sat on a \$3/- seat. He shouted at me at the top of his voice and when I pleaded with him to establish my innocence he kept on shouting at me. I was then asked to call the school captain Hiu Voon How and some members of the interact club. After he had talked to them (in my absence) I was again called into his room. This time I was absolved of most of the allegations he had made against me but said that I had used "dirty" words at the Town Hall. I denied this allegation as well. He kept on shouting and I lost my nerves and sobbed.

10

20

After that he asked me to get to the class. I went to the bathroom and washed my face. When I was on my way to my class I felt giddy. I paused for a moment and I then slowly walked up to the Headmaster's room and there told him that I was feeling giddy and I wanted to go home. He refused my request and asked me to go to the library. I obeyed him. I had been in the library for about 15 minutes when the Headmaster came up to me and asked me to get to his office. There he questioned me further and asked me to "swear on the life of my mother" that I never knew that I sat on a \$3/- seat. I swore as requested by him.

30

40

At this stage my state of mind and health was deteriorating and I felt that only rest could help me. I again asked for permission to go home but I was asked

to go back to the library. Just as I was getting down the steps I nearly fell and held to the wall and walked slowly to the Hall where I sat till school was over at 1.10 p.m.

I then asked my friend Kim Swee to take me home. While he was taking me home I fainted and was taken to my house in a passing car where I was subsequently attended to by a Doctor.

10

Sd: Mahadevan

Mahadevan s/o Nadchatiram  
10/4/68

EXHIBIT "C"

EXHIBIT D 10

Talipon: 298 Sekolah Menengah  
Surat Kita: (34) in Jenis Kebangsaan  
K.G.V.Sec.8/2/64/SJ.1. King George V  
Seremban.

Exhibit D 10  
Minutes of  
Meeting of  
Board of  
Governors.  
10th June 1968

20

10th June, 1968.

Continuation of the Meeting of 27th May, 1968

Members present

1. Dato Abdul Jalil b.Hj. Aminuddin  
(Chairman)
2. Y.B. Tuan Haji Sulaiman b. Jaalam
3. Inche Yong Sze Lin
4. Unche M. Nadchatiram
5. Inche K.K. Sankaran
6. Inche K. Vythilingam
7. Inche A.B. Khan
8. Inche Lee Tee Siong
9. Inche Lim Ewe Law
10. Inche Gurdial Singh

30

Absent

1. Inche Shaari b. Harun

Exhibits  
Exhibit P9  
Exhibit "C"  
to Petition of  
Appeal to Board  
of Governors  
25th May 1968  
(continued)

Exhibits  
 Exhibit D10  
 Minutes of  
 Meeting of  
 Board of  
 Governors.  
 10th June 1968  
 (continued)

The attention of the Board was drawn to the two suggestions which were put forward on the 20th of May, 1968. They were as follows :

(1) the first view was that of Mr. Yong Sze Lin, who stated that the Board consider all the evidence produced by the Headmaster and the views of Mr. M.Nadchatiram, and based on these, make recommendation to the Registrar. He also stated that the Board follow the Education (School Discipline) Regulation to the letter. 10

(2) The second view was put forward by Inche M. Nadchatiram. He stated that a full hearing should be given as in a court, and also to allow his son to be represented by counsel. The members were asked to make a decision as to the procedure to be adopted.

It was decided that the two proposals above be put to the vote. 20

The results of the voting were as follows :-

Those in favour of the first proposal -  
 7 members

Those in favour of the second proposal -  
 1 member

The Chairman, Mr. Yong and Mr.Nadchatiram did not vote.

The meeting then discussed the question of Mr. Nadchatiram being a member of the Board as well as the appellant in the case. Mr. Yong proposed that Mr. Nadchatiram be present to put forward his case and the Headmaster to put across his case. The members of the Board would then discuss the cases presented. This proposal was seconded by Mr. Sankaran. Result of the voting: 8 in favour, none against, 2 abstained. 30 40

The Chairman did not vote.

Mr. Nadchatiram then requested that he be heard first as he was not feeling

well. He then presented his appeal and answered questions put to him by the Board.

After Mr. Nadchatiram had put forward his case he stated that he was not feeling well and asked permission to leave the meeting. The chairman gave Mr. Nadchatiram permission to leave the meeting as requested.

Exhibits  
Exhibit D 10  
Minutes of  
Meeting of  
Board of  
Governors.  
10th June 1968  
(continued)

10 The Headmaster then presented his case. He answered many questions put to him by various members of the Board. After this he left the meeting to enable the Board members to discuss the appeal.

The Board discussed the appeal for more than an hour and came to the following decision :-

20 "The Board having heard the case put by the appellant (Mr. M. Nadchatiram) and the Headmaster and having discussed the matter at considerable length is of the unanimous opinion that :-

- (a) the action taken by the Headmaster is fully justified and
- (b) the Board recommends to the Registrar that the boy be readmitted to another school in lieu of the boy being young".

30 The Board then requested the chairman to inform Mr. Nadchatiram of the Board's decision.

#### General

40 1. The Headmaster drew the attention of the Board to the recruitment of graduate teachers to the school as a result of vacancies created by recent resignations. There were only 5 applications and all 5 were recruited. The selection committee comprising of the Chairman, Mr. Lim Ewe Law, and Mr. Lee Tee Siang approved the appointment.

Exhibits  
Exhibit D 10  
Minutes of  
Meeting of  
Board of  
Governors.  
10th June 1968  
(continued)

The meeting then adjourned at 11.40  
p.m. with a vote of thanks to the chair.

Sgd. K. Anandarajan  
Secretary,  
Board of Governors,  
King George V School,  
Seremban.

c.c.  
The Chief Education Officer,  
Negri Sembilan,  
Seremban.

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Exhibit D 12  
Minutes of  
Meeting of  
Board of  
Governors.  
21st May 1968

Talipon: S'ban 298

Sekolah Menengah Jenis  
Kebangsaan  
King George V  
Seremban.

21st May, 1968.

Minutes of the Emergency Meeting of the  
Board of Governors  
King George V School, Seremban.

The meeting was held on Monday,  
20th May, 1968. It was called to discuss  
procedure to consider the appeal of Mr.  
M. Nadchatiram.

20

Members Present:

1. Dato Abdul Jalil b.Hj.Aminuddin  
(Chairman)
2. Y.B. Tuan Hj.Sulaiman b. Jaalam
3. Inche Yong Sze Lin
4. Inche M. Nadchatiram
5. Unche K.K. Sankaran
6. Inche K. Vythilingam
7. Inche A.B. Khan
8. Inche Sharri b. Harun
9. Inche Lee Tee Siong
10. Inche Lim Ewe Law
11. Inche Gurdial Singh
12. Dr. Mohamed Noor b. Marahakim

30

1. The Chairman sought the permission from the Board for Inche Mohammad b. Hj. Nassir, Assistant Organiser of Schools, Negri Sembilan, to be present as an observer. The Board had no objection.

2. The Chairman informed the Board that he would want the views of all members on the procedure to be adopted to deal with the appeal. Two views were put forward :-

Exhibits  
Exhibit D 12  
Minutes of  
Meeting of  
Board of  
Governors.  
21st May 1968  
(continued)

10 The First View was that of Mr. Yong Sze Lin, who stated that the Board consider all the evidence produced by the Headmaster and the views of Mr. Nadchatiram and based on it, make recommendations to the Registrar. He also stated that the Board follow the Education (School Discipline) Regulations to the letter.

20 The Second View was put forward by Inche M.Nadchatiram. He stated that a full hearing should be given as in a court, and also to allow his son to be represented by counsel.

The Chairman then informed the Board that he would get clarification from relevant authorities and seek their views.

The meeting then closed with a vote of thanks to the Chair.

30 Sgd. K. Anandarajan  
Secretary,  
Board of Governors,  
King George V School,  
Seremban.

s.k.

The Chief Education Officer,  
Negri Sembilan.

