

HUMAN RIGHTS COMMITTEE

Perera v. Sri Lanka

Communication No. 1091/2002

7 August 2003

CCPR/C/78/D/1091/2002

ADMISSIBILITY

Submitted by: Wannakuwatte Perera

Alleged victim: The author

State party: Sri Lanka

Date of communication: 18 April 2002 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 7 August 2003

Adopts the following:

DECISION ON ADMISSIBILITY

1.1 The author of the communication, dated 18 April 2001, is Wannakuwatte Perera, a Sri Lankan national who was born 30 October 1938. He claims to be a victim of violations by the Democratic Socialist Republic of Sri Lanka of article 14, paragraph 1, of the Covenant. He is not represented by counsel. The Optional Protocol entered into force for Sri Lanka on 3 October 1997.

1.2 On 17 October 2002, the Committee's Special Rapporteur on New Communications decided to separate the consideration of the admissibility and merits of the communication.

The facts as presented

2.1 While acting as a Deputy Chief Manager of the People's Bank (a State bank of Sri Lanka), the author was "interdicted" by the bank alleging that he had misled the Regional Office of the Bank in approving the provision of facilities to a customer. According to the author, the bank itself did not incur any loss in this transaction, and the allegations were based on conjecture and bias, in order to cover up certain malpractices of two superior officers who were directly involved in providing facilities to the customer.

2.2 After an internal inquiry, the author was dismissed from service on 2 March 1987, without any opportunity to call witnesses in his favour. In 1988, the author failed to obtain relief from the Labour Tribunal and therefore appealed to the High Court.

2.3 On 13 February 1998, the High Court held that the author had been improperly dismissed, and ordered Rs. 474,941.60 (1) compensation and costs, in lieu of re-instatement, as at that point the author had passed the 55 year retirement age. The author appealed to the Supreme Court, on the basis that the relief granted in the High Court was inadequate, in particular as it did not take into account salary increases that he would have received had he not been dismissed. The author's employer cross- appealed to the same Court against the High Court's finding of improper dismissal.

2.4 On 22 March 2000, the Chief Justice of the Supreme Court, sitting with two other justices of the court, examined the various briefs and allegedly commented that it was not worth reading such a heavy brief on a matter that was "a minor one". The Chief Justice allegedly went on to state that some injustice had been done to the author and suggested "some compensation". The author's counsel objected and argued that the quantum of damages fixed in the judgment of the High Court was inadequate, and pleaded that the case be argued and heard. That notwithstanding, the Chief Justice advised the counsel for the parties to reach an agreed settlement and postponed consideration of the case.

2.5 On 9 May 2000, when the matter came up for the second time before the Supreme Court, the Chief Justice did not allow the author's counsel to argue the case although it was fixed for argument, and threatened to dismiss the case if no settlement was reached by a further date, which was fixed for 12 September 2000. He allegedly stated that the case should come only before him.

2.6 On 12 September 2000, the employer's counsel agreed to pay RS 469,941.60 (about US\$ 4,690) as compensation to the author. On that basis, the Supreme Court on the same day dismissed both appeals without costs, allegedly over objections from the author's counsel that the author's entitlements to pension rights should be recorded. Since that point, the author contends that his employer has allegedly improperly denied him pension entitlements.

2.7 The author has petitioned the President of Sri Lanka, but no response has been received.

The complaint

3.1 The author alleges a violation of article 14, paragraph 1, of the Covenant, in that he was denied a fair hearing by the Supreme Court and that, in dealing with his case, the Supreme Court did not

act as an independent and impartial tribunal in as much as the author was forced to accept whatever order was directed by the Court.

3.2 The author contends that neither his counsel nor himself had any alternative but passively to accept the Supreme Court's order. He alleges that even the intervention by the author's senior counsel requesting that his entitlement to his pension rights should be recorded, "fell on deaf ears".

3.3 Furthermore, the author considers that, although his pension entitlements are unaffected by the settlement directed by the Supreme Court, his former employer has ignored the author's repeated requests to be granted such entitlements on the basis that Court's order, as a result of the Court's failure to record his entitlements.

3.4 The author accordingly requests the Committee to declare that he has not received a fair hearing and therefore that he has been deprived of his rights to the payment of pension and other benefits by his former employer. He further requests the Committee to request payment of adequate compensation commensurate with his actual losses suffered, taking into account what his career path would have been.

The State party's submissions on the admissibility of the communication

4.1 By submission of 10 October 2002, the State Party argues that the communication is inadmissible for failure to establish a prima facie violation of the author's rights under article 14, paragraph 1, of the Covenant, and inadmissible for failure to exhaust domestic remedies concerning his remaining claims.

4.2 As to the claim under article 14, paragraph 1, the State party observes that the judgment of the Supreme Court reflects an agreement reached by the parties, i.e. the author and the People's Bank. Both parties were represented by counsel who entered the settlement in court on behalf of their respective clients. In fact, the author was represented by very senior counsel in the local bar, with over 30 years of practice. The State party refers to the failure of the author to produce any material to the Committee suggesting either that his counsel did not in fact agree to the settlement, or that counsel had agreed under coercion or duress. In these circumstances, the author's contention that the consent given on his behalf for the settlement reflected in the Court order was involuntary is unsubstantiated. On the contrary, the circumstances demonstrate that the author at all times voluntary acquiesced in, and accepted, the settlement entered in Court.

4.3 The State party further observes that the sole reason advanced by the author in support of his contention that he did not get a fair hearing in the Supreme Court is the alleged conduct of the Chief Justice. However, the State party notes that the judgment reflects the collective decision of the Court and not the individual sentiments of the Chief Justice. In fact, the bench of three judges who heard the case was unanimous in its decision. The author did not complain about the conduct of the two other judges who participated in the proceedings and order reached, and those judges enjoy constitutional parity of status with the Chief of Justice in the conduct of judicial proceedings. Therefore, the author's contention that he was denied a fair hearing is misconceived and without

merit.

4.4 In any event, the State party observes that if the author was dissatisfied with the conduct of the Chief Justice or any judge(s), he could have lodged an objection, either orally or in writing, objecting to the participation of such judge(s) in further proceedings. In the instant case, the author did not exercise such rights, although he had every opportunity to do so, which only reinforces the contention that he acquiesced in, and accepted, the Supreme Court's decision.

4.5 As to the author's further complaints, the State party notes that they focus on the claim that the author's pension entitlements were adversely affected by the order of the Supreme Court. However, as borne out in the judgments of both the High Court and the Supreme Court, his entitlements in this respect at no time formed any part of the subject matter of the proceedings before either the Labour Tribunal or the courts. What was judicially decided was whether the termination of the author's service was justified or not. Hence, these tribunals could not have made an order on pension entitlements, and indeed the author himself acknowledges that the Supreme Court's decision did not even mention these entitlements.

4.6 The State party further observes that pension entitlements are governed by statute, and several constitutional and statutory remedies are available to enforce such rights in the event of non-compliance by the party obliged to pay them. Thus, the author could have sought prerogative relief by way of mandamus in the Court of Appeal pursuant to article 140 of the Constitution, or he could have invoked the fundamental rights jurisdiction of the Supreme Court under article 126 of the Constitution. He failed to avail himself of either such remedy, although he had every opportunity to do so. Accordingly, he has failed to exhaust all available domestic remedies, as required by article 5, paragraph 2(b), of the Optional Protocol.

The author's comments on the State party's submissions

5.1 By letter of 3 December 2002, the author rejected the State party's observations, recalling that the Chief Justice had threatened to dismiss the case if no settlement was reached, and directed that it be scheduled to be heard only before him. The author argues his counsel was left with no option but to submit to the wishes of the Chief Justice, the final judicial authority in the State's legal system.

5.2 In this connection, the author states that the arbitrary and partisan handling of certain judicial matters has become the subject of investigation by various international bodies, such as the International Bar Association (IBA), which sent a mission to Sri Lanka "to identify the circumstances surrounding the calling of a referendum on the constitution, assess the constitutional position of such action and the implication for the rule of law, in the light of recent cases seeking to disbar the Chief Justice from practicing as a Lawyer".(2) The author also refers to an impeachment motion against the Chief Justice submitted to the Speaker of Parliament on 6 June 2001, regarding other cases where the Chief Justice had allegedly abused his position. The author claims that it is abundantly clear that the attitude of the Chief Justice created a situation where litigants, lawyers and even judges, who all were under the authority of Chief Justice, were compelled to acquiesce. In such a situation, he contends that he found himself helpless as a litigant and without any means of redress.

5.3 On the pension rights issue, the author refers to correspondence from his former employer, in which the latter interprets the Court's order conclusively to determine the issue of pension entitlements. In a letter of 31 March 2001, the former employer stated that it would not entertain any further communication with the author claiming "various payments including terminal benefits", as the author's claim had been settled by the Supreme Court. According to the author, this situation would not have arisen if the Chief Justice, as requested by his counsel at the hearing of his case, had recorded that the settlement, albeit imposed upon the author, would not affect his pension entitlements.

Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol.

6.3 As to the author's claim under article 14, paragraph 1, of the Covenant, the Committee notes that the Supreme Court's decision of 12 September 2000 was delivered by three justices of the Court. The allegations of improper conduct in the administration of justice in certain other cases made against the Chief Justice in the parliamentary notice of resolution do not, in the Committee's view, substantiate the author's claim that the encouragement by the Chief Justice to both parties' counsel to reach an amicable settlement on the quantum of damages exceeded the bounds of a superior court's proper management of its judicial resources in violation of article 14, paragraph 1. The Committee notes, in this context, that counsel did not explicitly contest the Court's oral framing of the disposition of the case, and that, in substance, the High Court's findings in the author's favour were almost entirely upheld at the appellate level. Accordingly, the Committee considers this claim unsubstantiated, for the purposes of admissibility, and consequently to be inadmissible under article 2 of the Optional Protocol.

6.4 As to the claim concerning the author's entitlement to his pension rights, the Committee notes that the issue of such entitlements at no time formed part of the proceedings before the domestic courts, which were concerned with the lawfulness of the author's dismissal and the quantum of the resulting damage, and in particular that this issue was not addressed in the Supreme Court's order of 12 September 2000. To the extent that the author's former employer may be denying him his lawful pension entitlements, the Committee observes that there are a variety of domestic remedies available to him against his employer, by which his rights in this regard may be vindicated. Accordingly, this claim is inadmissible under article 5, paragraph 2(b), of the Optional Protocol for failure to exhaust domestic remedies.

7. The Human Rights Committee therefore decides:

a) That the communication is inadmissible under articles 2 and 5, paragraph 2(b), of the Optional Protocol.

b) That this decision shall be communicated to the author and to the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Alfredo Castillero Hoyos, Mr. Franco Depasquale, Mr. Maurice Glèlè Ahanhanzo, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Martin Scheinin, Mr. Hipólito Solari Yrigoyen, Ms. Ruth Wedgwood and Mr. Roman Wieruszewski.

Notes

1. The compensation comprised Rs. 469,941.60, being the author's last monthly salary multiplied by the months that had passed until judgment, and Rs. 5000 as costs.

2. Report of The International Bar Association 2001, *Sri Lanka: Failing to protect the Rule of Law and The Independence of the Judiciary*. <http://www.hg.org/cgi-bin/redirect.cgi?url=http://www.ibanet.org>