IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Action No. 547 of 1985

Between:

DEO DUTT SHARMA (f/n Brahmadin) Plaintiff

- and -

FIJI MEDICAL ASSOCIATION Defendant

Plaintiff in Person
Mr D.C. Maharaj for the Defendant

JUDGMENT

The plaintiff, who conducted his own case, commenced this action by originating summons against the Fiji Medical Association (F.M.A.), of which he is a member.

He seeks the three declarations, which I will refer to later, damages and costs.

Dr Balram Iyer, the President of the F.M.A. in his affidavit answered the allegations in Mr Sharma's affidavit filed in support of the summons. The affidavits filed in this action have, by consent, been treated as pleadings. The action was heard in open court where the affidavits were admitted in evidence.

The basic facts are not in dispute.

The plaintiff is a very highly qualifed surgeon who is entitled to and is properly called Mister instead of Doctor. I have throughout this judgment referred to him as Mr Sharma when not referring to him as the plaintiff. He was at the relevant time the past President of the F.M.A. and a member of the Executive Council of the F.M.A.

Mr Sharma on the 16th April, 1985 by letter of that date, addressed to the Secretary of the F.M.A. resigned from the F.M.A. Executive Council and from the Editorial Board of the F.M.A. If the letter had been merely notice by Mr Sharma of his retirement the letter would not have resulted in the present action. Mr Sharma, however, took the opportunity of abusing the members of the council in insulting terms giving vent to his obvious dislike for the President of the F.M.A. and for the members of the council, in whom he apparently has no confidence at all. He refers in his letter to the President, a fellow professional medical practitioner, as "puerile, weak and ingratiating."

The letter brought a response from the President and the Council which Mr Sharma apparently did not anticipate and to which he has objected by initiating this action against the F.M.A.

The Executive Council of the F.M.A. on the 31st May 1985, at a meeting on that date, dealt with a number of routine matters and Mr Sharma's resignation letter. It also dealt with a letter from the President, Dr Iyer to the Secretary of the F.M.A. complaining about Mr Sharma's letter and suggesting to the members of the Council that appropriate disciplinary action should be taken against him.

Dr Iyer might have been excused if he had answered Mr Sharma's abusive letter with a letter in the same vein.

He did set out in his letter alleged facts regarding Mr Sharma's conduct over a period of time and stated (inter alia):-

> "It appears Dr Sharma's barrage of episodic insulting attacks on his fellow colleagues has become an entrenched symptom of his character."

There were nine doctors, members of the Executive Council at the meeting on 31st May 1985. The minutes of that meeting record that several members in speaking about the resignation letter deplored the use of unprofessional words used by Mr Sharma.

When considering the President's letter, views were expressed that Dr Sharma's attitude and choice of words slandered the reputation and integrity of council members. It was considered that he was guilty of conduct prejudicial to the interests of the FMA. The minutes also record that the feelings of the members ranged from suggestions that he be expelled from the FMA to suspending him for 3 months.

A member moved a motion which was duly seconded and carried unanimously that Dr Sharma be suspended from the FMA for a period of 3 months. The 3 months expires on the 31st August, 1985.

The secretary on the day of the meeting wrote to Mr Sharma in the following terms:-

> "Dr D.D. Sharma,
> Suite 3, Nina House,
> Nina Street,
> Suva.
>
> Dear Dr Sharma,
>
> I acknowledge the receipt of your letter dated 16.4.85 which was discussed in the Executive Council meeting today and I have been asked

to convey the following decision of the Council to you.

The Executive Council has suspended you from the membership of the Fiji Medical Association for a period of three months in accordinance with section 27(a) of its Constitution (1972) effective from the date of this letter.

The grounds of your suspension are:

(a) The derogatory remarks made by you concerning the President and the Council Members who were elected unanimously.

(b) Unprofessional behaviour by you in episode involving Professor Lander which resulted in charges being laid against you.

(c) We note that of the five Council meetings you fully attended one and came late in one and did not attend the other three nor submit your apologies.

Yours faithfully,

Sgd. Dr. V.K.Singh
SECRETARY."

The declarations sought by Mr Sharma indicates what he now complains about. He seeks:-

(a) A declaration that the procedure adopted by the Executive Council at the meeting on 31st May, 1985 to suspend Dr Deo Datt Sharma from membership of Fiji Medical Association was not proper in that the Rules of Natural Justice were not followed viz, he was not heard before the Council went on to decide his suspension and that the Executive Council as a party involved in the accusations had no right to decide on Dr Deo Datt Sharma's suspension as a member from the Fiji Medical Association.

(b) The Declaration that Council Members were biased against Dr Deo Datt Sharma and therefore were not competent to sit on judgment to suspend him.

(c) A Declaration that the suspension of Dr Deo Datt Sharma from the membership of the Council was therefore null and void.

(d) Award of general damages against the Fiji Medical Association as the Court might think fit.

Under Part VII of the F.M.A's constitution are the powers which the Executive Council may exercise.

In suspending Mr Sharma the Council were purporting to act under paragraph 27 of the Constitution which is as follows:-

> "27. Expulsion or Suspension of Association Members -
>
> If any member is proved, to the satisfaction of the Council, to have been guilty of conduct prejudicial to the interests of the Association the Council may -
>
> (a) suspend member from the Association for a period not exceeding three months, or
>
> (b) expel such member from the Association.
>
> Any member so suspended or expelled shall have the right to appeal to the Annual General Meeting or to an Extraordinary General Meeting."

Mr Sharma complains of a breach of natural justice in that he was not heard before the Council went on to suspend him. He also points out that the rule envisages a hearing or "trial" in the use of the word 'proved' in paragraph 27.

The members of the Council may have considered that the letter spoke for itself and that no other proof of Mr Sharma's conduct was required. They may also have considered that they did not want to hear oral comments of the nature Mr Sharma had expressed in writing which was probably why no member suggested that Mr Sharma be called before the Council to explain his conduct.

The first paragraph of the F.M.A. Code of Ethics states (inter alia):-

> "1 Duties of Doctors in General
>
> A doctor must always maintain the highest standard of professional conduct in his relationship with his patients, his professional colleagues...."

Mr Sharma who still does not admit that the letter transgressed any code of ethics stated that paragraph 1 referred to professional ethics and was not relevant to what he was alleged to have done in writing as he did to the Council of the F.M.A.

Mr Sharma's colleagues on the Council rightly or wrongly thought otherwise and decided to discipline him and that is a decision which was for them to make.

Mr Sharma appears also to have ignored paragraph 3.1 which is as follows:-

> Doctors to one another
>
> 3.1. The establishment of mutual confidence and dignity within the profession depends on good medical etiquette, the main principles of which are contained in a nutshell, in the International Code of Medical Ethics as follows:-
>
> "A doctor ought to behave to his colleagues as he would have them behave to him ....."

Para 27 provided a remedy for Mr Sharma if he wished to appeal against his suspension and that was to appeal to his fellow members in a general meeting of the FMA.

Mr Sharma has given reasons why he did not appeal and that was because he did not have time to appeal to an Extraordinary General Meeting that was being held the afternoon of the day he received the notice of his suspension. He could have had another meeting called but he did not request the Council to call one.

Had that meeting been called, at which no doubt the contents of his resignation letter would have been disclosed, it is very doubtful indeed whether Mr Sharma would have won general support of his colleagues to the lifting of his suspension.

Where a member of a voluntary association has accepted rules which give the Executive powers to enforce domestic discipline and provides for penalties and provides for an appeal from a decision of the Executive that procedure should normally be followed.

It is not generally appreciated that the Court has a discretion whether to grant relief in cases such as the instant one where the rules do not provide for any hearing and give the Executive Council the power to do what they did do - suspend Mr Sharma.

The Court will not normally grant relief to a disgruntled member where voluntary associations are concerned where members agree to a procedure to be followed and when the penalty involved is a light one. Had Mr Sharma been expelled from the F.M.A. the position would be different. The standard or concept of natural justice is adjusted by the Court to fit the facts of a case.

In University of Ceylon v Fernado (1960) 1 W.L.R. 223, a case where there was a domestic commission of injury, the Privy Council held that in the absence of any express requirement as to the procedure to be followed the Commission still had to comply with the elementary and essential principles of fairness.

There was in that case a departure from procedure usually followed in such cases. The Vice-Chancellor took evidence in the absence of the respondent or of two members of the Commission. On the facts of that case where the Respondent had been accused of cheating, their Lordships held there had been sufficient compliance with the requirements of natural justice.

Nor it is appreciated that even where there is a technical breach of natural justice a Court will sometimes still refuse relief.

In Glynn v Keele University (1971) 1 WLR 487 at p. 494 Pennycuick V.C. had this to say:-

> "The context of educational societies involves a special factor which is not present in other contexts, namely the relation of tutor and pupil; that is to say the society is charged with the upbringing and supervision of the pupil under tuition, be the society a university or college, or a school. Where this relationship exists it is quite plain that on the one hand in certain circumstances the body or individual acting on behalf of the society must be regarded as acting in a quasi-judicial capacity - expulsion from the society is the obvious example. On the other hand, there is a wide range of circumstances in which the body or individual is concerned to impose penalties by way of domestic discipline. In these circumstances it seems to me that the body or individual is not acting in a quasi-judicial capacity at all but in a magisterial capacity, i.e.,in the performance of the rights and duties vested in the society as to the upbringing and supervision of the members of the society. No doubt there is a moral obligation to act fairly, but this moral obligation does not, I think, lie within the purview of the court in its control over quasi-judicial acts. Indeed, in the case of a schoolboy punishment the contrary could hardly be argued."

When only suspension from exercising the rights of a member are concerned, as in the instant case, the Executive Council could be said to have been acting in a magisterial capacity to enforce domestic discipline and was not acting in a quasi-judicial capacity.

If the Council was acting in a quasi-judicial capacity then I still find myself in agreement with Pennycuick V.C. when he said at p. 496 in Glynn's case:-

> "So in that passage Lord Parker C.J. stated plainly thatthe court has a discretion as to whether to set aside by way of certiorari a decision of a quasi-judicial body even where there has been a failure in natural justice. In another recent case, namely Buckoke v Greater

London Council [1970] 1 W.L.R. 1092, 1097 Plowman J. after quoting Ex parte Fry [1954] 1 W.L.R. 730 said: 'In my judgment the ratio decidendi of that case is just as applicable to a claim for an injunction as to a claim for an order of certiorari; both are discretionary remedies.'

I have, again after considerable hesitation, reached the conclusion that in this case I ought to exercise my discretion by not granting an injunction. I recognise that this particular discretion should be very sparingly exercised in that sense where there has been some failure in natural justice. On the other hand it certainly should be exercised in that sense in an appropriate case, and I think this is such a case. There is no question of fact involved, as I have already said. I must plainly proceed on the footing that the plaintiff was one of the individuals concerned. There is no doubt that the offence was one of a kind which merited a severe penalty according to any standards current even today. I have no doubt that the sentence of exclusion of residence in the campus was a proper penalty in respect of that offence. Nor has the plaintiff in his evidence put forward any specific justification for what he did. So the position would have been that if the vice-chancellor had accorded him a hearing before making his decision, all that he, or anyone on his behalf, could have done would have been to put forward some plea by way of mitigation. I do not disregard the importance of such a plea in an appropriate case, but I do not think the mere fact he was deprived of throwing himself on the mercy of the vice-chancellor in that way is sufficient to justify setting aside a decision which was intrinsically a perfectly proper one."

Those comments are very apt and cover the situation in the instant case where declarations are sought. The letter Mr Sharma wrote spoke for itself. It proved the conduct which the Council considered prejudicial to the interests of the F.M.A.

Mr Sharma in the present action has not retracted any of the statements he made in his letter. It is apparent that a hearing would not have made any difference to the outcome unless Mr Sharma had made the situation worse by intensifying his attack on the President and the other members of the Council in which event the Council may have purported to expel him.

One criticism I have of the actions of the Council is that the members should have confined their grounds for suspension to the resignation letter. The inclusion of the episode involving Professor Lander had occurred some time before Mr Sharma wrote his letter and was best forgotten.

So also the Council should not have included Mr Sharma's very poor attendance record as one of the grounds. There may have been reasons for his failure to attend meetings.

Nevertheless, it was the letter which resulted in the council suspending Mr Sharma and the inclusion of the other non relevant grounds is probably an understandable reaction of members to the insulting nature of Mr Sharma's letter.

I would repeat that Mr Sharma should have followed the procedure in the Constitution and exercised his right of appeal to the members of an Extraordinary General Meeting.

I decline to make any of declaration sought by Mr Sharma. As regards alleged bias on the part of the members, having attacked all the members in his letter, he assumes they must have been biased and were therefore disqualified to sit in judgment on him.

If anything, this further attack on the integrity of the Council members establishes that Mr Sharma is quite unable to credit any of the members of the Council with any sense of fair play.

The President and Vice-President of the F.M.A. both gave evidence. They were both impressive witnesses each with a good professional manner. The President said that when his letter was read at the meeting he did not comment on it and he harboured no hard feelings against Mr Sharma.

It was for Mr Sharma to establish his allegation that the Council members were biased. He failed to do so, nor did he establish his claim to damages which was based on an allegation that the council had "leaked the news" to the media. He failed to establish that the F.M.A. or any member of it gave any news to the media.

The only evidence before me of statements or information being given to the media indicates that it was Mr Sharma himself who furnished the media with all the details except the full contents of his letter. The Sun of Sunday June 2nd, 1985 published a photo of Mr Sharma with the prominent heading I'LL FIGHT BAN, VOWS EX-LEADER DEO DUTT SHARMA.

The Court has a discretion whether to grant a declaration or not. The instant case is one where the declarations sought should not be made. I accordingly dismiss the application and, also again following Pennycuick V.C., I make no order as to costs.

(R.G. Kermode)
J U D G E

SUVA,

23 August, 1985