

**ASANGA
VS.
COMMANDER OF THE NAVY AND OTHERS**

COURT OF APPEAL,
SRISKANDARAJAH, J.
CA 2405/2004.

Writ of Certiorari-Navy Act- Charge Sheet- Section 89, Section 104, Section 120-Guilty-imprisonment-Could it be imposed?-No opportunity given to discuss case with defending officer-Fair hearing?

The Petitioner was charge sheeted under Section 89, and 104 of the Navy Act. Petitioner pleaded guilty to the 1st charge and not guilty to the 2nd charge. Petitioner was found guilty of both charges and sentenced to one month's imprisonment.

It was contended that, Section 89 and 104 of the Navy Act do not entail prison sentences, and that he did not get an opportunity to meet his defending officer to discuss the case.

HELD :

- (1) The punishment imposed on the petitioner is lawful as provided under Section 89-104 with section 120 Navy Act as simple imprisonment is a lesser severe punishment in the scale of punishment than that of dismissal with disgrace.
- (2) If the petitioner was not satisfied with the defending officer he would have made a request to provide another officer or moved for a postponement at the beginning of the trial that he needs time to change the defending officer or to discuss with the defending officer but without any objection the petitioner had participated in the trial defended by his defending officer.
- (3) After participating in the trial the petitioner now cannot complain about the ability of the defending officer or the defence taken by the defending officer.

APPLICATION for a Writ of Certiorari.

Case referred to :

Issadeen Vs. Director General of Civil Aviation 19962 Sri LR 348

M. Samarakoon with U. Malalasekera for petitioner.

Yresha de Silva SC for respondents.

Cur. adv. vult.

November, 27 2006.

SRISKANDARAJAH, J.

The Petitioner was a Petty Officer of the Sri Lanka Navy. He has served in Trincomalee, Mannar, Kilali, Elativu, Annalativu, Nainativu Kurikattuwan and Delft during his career in the Sri Lanka Navy. He was awarded with the Poornaboomi, North and East Service and the Riviresa Medals. It is common ground that whilst the Petitioner was serving at Punkudutivu a summary trial was held against him on 12.10.2004 on a charge sheet preferred in terms of Section 89 and 104 of the Navy Act as amended. The Petitioner in the trial pleaded

not guilty to the 1st charge but pleaded guilty to the 2nd charge. The Petitioner contended that on the day previous to the trial he was informed by the Administrative officer, the 3rd Respondent that his defending officer at the trial that would be held the following day will be Lt. R. G. G. Wickramasinghe the 4th Respondent. But he did not get an opportunity to meet the 4th Respondent to discuss the case with him.

At the end of the trial the 2nd Respondent found the Petitioner guilty of the 1st charge as well and imposed on him a sentence of one month's imprisonment.

The Petitioner contended that the 2nd Respondent has erred in law in imposing a prison sentence on the Petitioner, since Section 89 and 104 of the Navy Act do not entail prison sentences and the sentence, that could be imposed under the said Section is dismissal with disgrace from the Navy, or any less severe punishment set out in the schedule of punishments as appearing in the Navy Act. The Respondent submitted that the Petitioner was given a fair hearing and the punishment imposed including the 30 days simple imprisonment is in accordance with the relevant provisions of the Navy Act (as amended) and as per the scale of punishments stipulated in Section 120 of the Navy Act (as amended).

Instructions given under the Sri Lanka Navy Instructions Section 5 (Discipline) specifically provides that all officers exercising Judicial powers are required to follow the rules of natural justice and the commanding officer is required to provide the services of a defending officer at the will of the Accused. The learned Counsel for the petitioner submitted that the defending officer has not defended the accused efficiently and he has not got proper instructions from the Petitioner. The duty of the Commanding officer is to make available a defending officer subject to service exigencies. According to the Petitioner he was informed on the previous day of the trial the name of officer who is going to defend him in the trial. If the Petitioner was not satisfied with that officer he would have made a request to provide another officer or moved for a postponement at the beginning of the trial that he needs time to change the defending officer or to discuss with the defending officer but without any objection the Petitioner had participated in the

trial defended by the 4th Respondent. After participating in the trial the Petitioner cannot complain about the ability of the defending officer or the defence taken by the defending officer.

The Supreme Court held in *Issaddeen VS Director General of Civil Aviation*⁽¹⁾:

"Once the petitioner denied the charges, justice plainly required a proper inquiry at which he could have given evidence and called witnesses to support his position. It was essential that a fair opportunity should have been afforded to the Petitioner to be heard in his defence. There has been a failure of a fundamental principal of justice, namely, that a man's defence must always be fairly heard. Procedural fairness and regularity are of the indispensable essence of liberty."

In this case Kulathunga J. observed : An irreducible minimum of the requirements of natural justice are :

- (1) the right to be heard by an unbiassed tribunal.
- (2) the right to have notice of charges of misconduct, and
- (3) the right to be heard in answer to those charges.

In this instant case the two charges which were framed against the Petitioner were read to the Petitioner and he pleaded guilty to one charge and the inquiry proceeded against the other charge. The Petitioner's defending officer was given an opportunity to cross-examine the prosecution witnesses and the Petitioner was given an opportunity to call witnesses and to give evidence on his behalf but the accused did not call any witness or give evidence. At the conclusion of the Trial the Petitioner was found guilty. After perusing the previous record of the Petitioner and after the submission of the defending officer in mitigation the sentence was imposed on the Petitioner. The punishment imposed on the Petitioner is lawful as provided under Section 89 and 104 read with Section 120 of the Navy Act as the simple imprisonment is a lesser severe punishment in the scale of punishment than that of dismissal with disgrace. For these reasons the Court dismisses this application without costs.

Application dismissed.