



A Curated Conspectus of the Life, Love, Law,
Literature and Laughter of Albie Sachs

THE BEL PORTO CASE – VIDEO TRANSCRIPT

CHAPTER: A PROBLEMATIC INHERITANCE

JUSTICE ALBIE SACHS

It was a Cape Town case. That wasn't the reason why I wrote in it. But it was a very important time in the life of the nation. The democratic government inherited the structures of apartheid. There were sixteen different departments of education, can you imagine? And it would be for white, for black, for coloured, for Indians, each with their own government, and then in the four provinces... multiplied by four. They all had to be brought together into one Department of Education, Departments of Health... this was happening everywhere. And it involved a huge amount of rationalisation and creating common administration for institutions important for the public, that had previously been dealt with quite separately.

And the rationalisation meant, instead of having four people in charge of a certain area, you might have one. What happens to the other three? Finding other jobs for them? And so, the question of fair labour practices became extremely important.

CHAPTER: THE RIGHTS OF CHILDREN WITH SPECIAL NEEDS

And in one particular area, maybe of special concern to me, the rights of children with special needs. And now instead of having special needs coloured children, and special needs black African children... white children... they were just children with special needs.

And so now there's a lot of integration happening, but where there is now a superfluity of people because of the old apartheid divisions-- how do you retrench those? You know, they have a job. And so, consultation with the unions, with the people concerned-- and the policy of LIFO, last in, first out, is used. And in plain terms it makes sense, it's pretty objective. The longer serving people who've invested the most, who've usually got the most to contribute are the ones who stay on, and those who came in later have to leave.

CHAPTER: JUST AND REASONABLE RATIONALISATION

But this is a problem in the case of special needs; maybe I felt it more strongly. The people concerned weren't specialists. They were transport managers but they weren't just drivers. To drive somebody in a wheelchair requires dignified, decent, efficient management. Getting in and out of the wheelchair, into the vehicle, arrangement of seating... And the evidence was that at this particular school they had a cohort of particularly good local managers who had a bond, a very direct bond, with the children, not easily replaced. You can get somebody who's been thirty years in an office in the Social Welfare Department but who can't manage that.

So, I felt...I forget the exact details...that this was a form of unjustifiable retrenchment. And again, I forget the exact issue, I don't think it was on grounds of disability, but that it wasn't a just and reasonable form of rationalisation. And I wrote quite strongly on it. I remember at that time Arthur Chaskalson took on a much stronger standoff, *leave it alone, leave the administration, unless what they do is manifestly wrong and unreasonable and irrational, don't interfere*. And I felt that you should always look at the particularities of a particular situation... of people being involved. So, it was quite a strongly written dissent. And I remember, Yvonne Mokgoro joined me in that dissent. In general terms, administrative law under the Constitution took on new dimensions, so these cases I don't think were cited very much. They were sort of early days.

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