

CYRIL FERNANDO
v.
RATNASIRI WICKRAMANAYAKE AND OTHERS

SUPREME COURT
DHEERARATNE, J.,
WADUGODAPITIYA, J. AND
GUNAWARDANA, J.
S.C. (F.R.) APPLICATION NO. 324/96
NOVEMBER 3RD, 11TH, 1997, DECEMBER 12TH, 1997.

Fundamental Rights – Transfer of ownership of government vehicles to Senior Public Officers at retirement – Public Administration Circular No. 24/93 – Eligibility of an employee of a Public Corporation – Article 12 (1) of the Constitution.

Held:

Part III of the Public Administration Circular 24/93 provides for the transfer, to a Senior Public Officer, on the eve of his retirement, of the ownership of the vehicle which had been assigned to him for his official use. It relates to government vehicles and not to the transfer of ownership of vehicles belonging to corporations, statutory boards, local authorities, etc.; and the officer entitled to such transfer must be a public officer viz. a person holding paid office under the Republic as opposed to a corporation employee.

APPLICATION for relief for infringement of fundamental rights.

Varuna Basnayake, PC with Ms. Marina Fernando for the petitioner.

K. Sripavan DSG for the Attorney-General.

Cur. adv. vult.

December 17, 1997.

DHEERARATNE, J.

The petitioner was employed by the 3rd respondent corporation, which is a statutory body established in terms of the State Agricultural Corporations Act, No. 11 of 1972. He was appointed as a senior executive officer in 1976, the deputy general manager in 1985, the deputy director produce / warehousing in 1990, and the deputy director (estates) in 1994. He counted 19 1/2 years' of service with the 3rd respondent corporation up to his retirement in August 1995. The petitioner complains that his fundamental right guaranteed under Article 12 (1) was violated by all or anyone of the 1st to 4th respondents, by their refusal, on the eve of his retirement, to transfer the ownership of the vehicle assigned to him for his official use. The bone of contention between him on the one hand and the respondents on the other, is the application and interpretation of part three of the Public Administration Circular 24/93 (the Circular), dealing with transfer of the ownership of vehicles.

The petitioner contended that he was a "senior public officer" within the meaning of part three of the Circular and therefore was entitled, at his retirement, as of right, to obtain the transfer of ownership of the vehicle which was assigned to him. It was further contended on his behalf that the meaning of the term "senior public officer" is found in paragraph (ix) under category II in the annexure I of the Circular; and that reads "officers who are of and above the level of a deputy head of a department/institution in government departments/institutions, government corporations, statutory bodies, local authorities and government-owned companies, who have a minimum of five years, continuous service in a permanent post and confirmed in the such permanent post". The respondents do not agree with that interpretation and that has warranted a closer examination of the Circular by us.

The circular is titled "Importation of vehicles and issue of used vehicles from Procurement and Advisory Service Unit (PASU) on concessionary terms and transfer of ownership of government vehicles to officers". The preface to the Circular states that the Circular consists of three parts; the first two deal with (to state briefly) Importation and Purchase from PASU, respectively; and the deals with (to state verbatim) "Transfer of Ownership of Government Vehicles". In part one dealing with importation, under the subtitle "Eligibility", in the group marked (a), it is stated "All persons covered under categories I, II & III in Annexure I are eligible to make use of this concession". The term "all persons" is used there because in these categories there are persons other than "officers", like Members of Parliament, certain Private Secretaries, certain members of the Teaching Staff of Universities, etc. It is the description of officers under (ix), in the category II of Annexure I, that the petitioner states must be resorted to in construing the meaning of the term "Senior Public Officer" in part three of the Circular. In part two, which deals with purchase of used vehicles from the PASU too, there is a subtitle called "Eligibility" as in part one and it is stated that "all persons covered under categories contained in Annexure VI are eligible to make use of the concession . . ."

In part three of the circular dealing exclusively with the transfer of ownership, under the subtitle "Terms and Conditions" item (a) reads: "This has to be considered as once in a lifetime concession to **Senior Public Officers**, who have not availed of the facility under part I". Under the subtitle "Eligibility" it is stated "Officers with continuous, uninterrupted service up to the date of retirement or on extension after reaching the age of 55 are eligible to apply". It is noteworthy that unlike the specifications given under the subtitle "Eligibility" in parts I and II, the specifications under that subtitle in part III do not refer to any category of persons or officers with reference to any annexure. The reason for this difference is quite obvious; the category of officers to whom it applies is described in the body of that part itself under the subtitle "Terms and Conditions".

As the title to the Circular and its preface indicate, part three of the Circular relates to transfer of ownership of **Government vehicles**. This part of the Circular is therefore not applicable to the transfer of ownership of vehicles belonging to corporations, statutory boards, local authorities, etc. An officer who is entitled on the eve of his retirement, to obtain a transfer of ownership of a **government vehicle**,

which had been assigned to him and which he had been using, must necessarily be a **government** servant and not, for instance, a corporation employee. I find no justification to refer to categories of officers eligible under part one to discover the meaning of the term "senior public officer" in part three. By common usage, the term public officer denotes a **government** servant or an officer who holds paid office under the Republic as opposed to a corporation employee. The Chambers 20th Century Dictionary makes no reference to a "public officer"; but, a "public servant" is defined as a person employed by the **government**. By implication, a "public officer" should mean an officer employed by the **government**. The Establishments Code states that an "Officer" means a "Public Officer"; who is in turn defined as a person who holds any paid office under the Republic and specifically excludes from within its meaning, amongst some others, "an employee of a Public Corporation, a Statutory Board or an Institution vested in the Government". The Sinhala version of the Circular puts the matter beyond any doubt where the term "senior public officers" is referred to as "jeshta rajaye niladhareen".

For the above reasons, I hold that the petitioner was ineligible, on the eve of his retirement, to have obtained the transfer of ownership of the vehicle belonging to the 3rd respondent Corporation. I find no violation of his fundamental right by 1st to 4th respondents. The application is dismissed without costs.

WADUGODAPITIYA, J. – I agree.

GUNAWARDANA, J. – I agree.

Application dismissed.