

PIYASIRI
v.
PEOPLE'S BANK

COURT OF APPEAL
WIJEYARATNE, J.
C.A. APPLICATION No. 149/83.
JUNE 19, 1989

Writ of Mandamus – Is People's Bank a public body? – Effect of Circular – Discretion to call for recommendation.

The Minister of Finance, under section 42A of the People's Bank Act, gave directions to the Board of Directors to implement the recommendations of a one man commission relating to promotion of Bank clerks and in consequence the Board issued a circular 186/82 formulated to implement the said recommendations.

Held–

Mandamus did not lie to compel the Board to call the petitioner, a Bank clerk, for an interview with a view to promotion in terms of the circular as:

- (1) the Bank though subject to ministerial control is not a public body but basically a commercial bank;
- (2) the said circular 186/82 does not have statutory force;
- (3) in any event, in the implementation of the circular which was a private and internal matter, the Bank has a discretion to call for recommendations from a superior officer (which recommendation the petitioner failed to obtain).

Cases referred to:

- (1) *Wijetunga v. Insurance Corporation* [1982] 1 Sri LR 1
- (2) *Chandrasena v. National Paper Corporation* [1982] 1 Sri LR 19
- (3) *Ceylon Bank Employees' Union v. Yatawara* 64 NLR 49, 58
- (4) *Gunaratne v. People's Bank* [1986] 1 Sri LR 338
- (5) *Wijeratne v. People's Bank* [1984] 1 Sri LR 1
- (6) *Wijeratne v. Air Lanka Ltd* [1987] 2 Sri LR 128
- (7) *Weligama Multi-purpose Co-operative Society Ltd. vs. Daluwatta* [1984] 1 Sri LR 195

(8) *R. v. East Berkshires Health Authority, ex parte Walsh* [1984] 3 All ER 425

(9) *Malloch v. Aberdeen Corp.* [1971] 2 All ER 1278

APPLICATION for writ of mandamus.

H. L. de Silva P.C. with *Gomin Dayasiri* for petitioner.

Dr. H. W. Jayewardene, Q.C. with *Kanag-Iswaran, P.C. Harsha Amarasekera and Harsha Cabraal* for the respondent.

Cur. adv. vult.

July 20, 1989.

WIJEYARATNE, J.

The petitioner who is a clerk in the respondent Bank has applied for an order in the nature of a Writ of Mandamus directing the respondent to call the petitioner for an interview in terms of the Staff Circular No. 186/82 dated 27.5.1982 in respect of promotion to Grade III, Class I.

According to the petitioner, he joined the respondent Bank as a Grade VI clerk on 1.7.1968 and was in Grade III, Class III, at the relevant time. He averred that in or about January 1982, His Excellency the President appointed one Nihal Wiratunga to inquire into promotions to Grade III and determine the basis on which promotion should be effected. In consequence, the said Nihal Wiratunga held an inquiry and made certain recommendations. Pursuant to these recommendations the Hon. Minister of Finance gave written directions (under section 42A of the People's Bank Act as amended) to the Board of Directors of the respondent Bank to implement the said recommendations. Accordingly the Board of Directors of the respondent Bank decided on 22.4.1982 to implement the said recommendations and the respondent bank called for applications for such promotion to Grade II, Class I, from eligible candidates in terms of the said Circular 186/82 which had been formulated. The petitioner made an application, but the respondent, by his letter dated 21.7.1982, informed the petitioner that the petitioner's application will not be considered as the petitioner's promotion had not been recommended. The petitioner and his trade union protested and as a result the petitioner was called for the written examination. The petitioner sat for the written examination in which he was successful, and in response to his letter the Personnel

Manager of the respondent Bank had informed the petitioner by his letter dated 6.10.1982 (marked "U") that the Matara Regional Manager of the Bank had not recommended his promotion for the following reasons:-

- (1) Subordinating the interests of the Bank to his own personal interests;
- (2) Bringing discredit to the Bank and obstructing superior officers;
- (3) Not carrying out his duties and not maintaining discipline.

The petitioner had denied these charges and claimed that in any event the recommendation of the Regional Manager was not a necessary pre-condition for his promotion and made protests personally and through his Trade Union, the Ceylon Bank Employees' Union. The General Manager of the respondent had thereupon appointed a committee of three senior officers to inquire into the matter and they had rejected the appeal of the petitioner.

The petitioner avers that under the circumstances the respondent is under a legal duty to call him for an interview and prays for a Writ of Mandamus accordingly.

The respondent has filed certain preliminary objections dated 26.2.1983 to the grant of this application.

Briefly the respondent states that it is not a public authority nor a department of the State amenable to the supervisory jurisdiction of this Court, but is an independent corporate body engaged in the purely commercial activity of the business of banking, and that the petition does not disclose a legal right to the performance of a legal duty by the respondent imposed by statute. This right is granted only to compel the performance of duties of a public nature and not for enforcement of private rights and that the petitioner's claim is misconceived in law and his remedy, if any, is in another forum, not in public law.

At the argument into the preliminary objections, various authorities were cited by Dr. H. W. Jayewardene, Q.C., on behalf of the respondent Bank and by Mr. H. L. De Silva, P.C., on behalf of the petitioner.

The Writ of Mandamus lies to compel a person or body to perform public duties imposed on them by law. Such duties may be imposed by statute, charter, common law or custom. It will not issue for the enforcement of merely private rights.

In England it has been held that the courts will not interfere in cases of dispute between members of private corporations even though carrying on business under a Royal Charter (*R. v. Bank of England* (1818-2B & Ald.624)). However, Mandamus will lie to compel a company to perform its statutory duties.

Therefore the question arises whether the respondent (People's Bank) is a public body performing public duties or statutory duties.

Learned counsel for the petitioner quoted the People's Bank Act, No.29 of 1961, as amended. He relied on section 4, which lays down the purposes of the Bank, namely, to develop the co-operative movement, rural banking and agricultural credit. He also cited section 34, which states that the accounts of the respondent were to be submitted annually to the Auditor General, and section 42A which empowers the Minister to give general directions in writing to the Board of the respondent.

He also cited sections 8 and 10 which give the Minister the power to appoint the Chairman and the Directors. He argued that the People's Bank is a public body and it is the duty of the Board to comply with the Minister's directions under section 42A.

In our country the position of statutory corporations like the People's Bank has been considered in several decided cases.

In the case of *Wijetunga vs. Insurance Corporation* (1), which was a case of infringement of fundamental rights under the Constitution, it was held that the question whether the Insurance Corporation is or is not a department of the State would be dependent on the Insurance Corporation Act, No. 2 of 1961. In that case certain tests were laid down to decide whether any public corporation set up by statute was an agency of the Government.

These include –

- (1) Is the body performing a task formerly carried on by private enterprise?
- (2) To what extent is it subject to Ministerial control, for example,

- has it independent discretionary powers?
- (3) Must it consult a Minister before it acts?
 - (4) Can a Minister give directions?
 - (5) Is its function one which has historically been regarded as governmental?
 - (6) Is it incorporated?
 - (7) Is it subject to government audit?
 - (8) Is its authority general or local?
 - (9) Is it a mere domestic body?
 - (10) Is execution against its property allowed?

In this case it was held that whether the functional test or the government control test was applied, the Insurance Corporation cannot be identified with the government and hence its action cannot be designated as "executive or administrative action".

For similar reasons, in the case *Chandrasena v. National Paper Corporation* (2), the Supreme Court held that the acts of the National Paper Corporation did not amount to executive or administrative action and dismissed the application of the petitioner for alleged infringement of fundamental rights under Articles 12(2) and 126 of the Constitution.

In another context Sansoni J. (as he then was) in the case of *Ceylon Bank Employees' Union vs. Yatawara* (3) held that the Bank of Ceylon (which was nationalised by the Finance Act, No.65 of 1961) was not a Government department.

However, in *Gunaratne vs. People's Bank* (4) where the Bank sought to lay down a condition that the appellant (Gunaratne) was not to join or continue as a member of the trade union if he was to gain promotion and where the appellant brought an action in the District Court that the conditions were null and void as they were a denial of his fundamental right of freedom of association under section 18(1)(f) of the 1972 Constitution, the Supreme Court held that the Bank would constitute the State or the Government within the meaning of that section.

In the case of *Wijeratne vs. People's Bank* (5) where the petitioners who were security officers in the Bank sought relief under section 126 of the Constitution on the ground that the new grading of their posts constituted an infringement of their fundamental right to equality (under Articles 12, 4(c) and (d) of the Constitution), it was held by the Supreme Court that there was no State action or executive or administrative action, and the application was dismissed on this preliminary objection.

Sharvananda J. (as he then was) dealt exhaustively with the provisions of the People's Bank Act, No.29 of 1961 as amended, and held that the Bank's main role is that of a commercial bank and its commercial activities cannot qualify as State action. In the case of *Rajaratne vs. Air Lanka Ltd.* (6), where the petitioner complained of unequal treatment in breach of Article 12(1) of the Constitution and sought relief under section 126, it was held that Air Lanka Ltd. could be considered an agent or organ of the Government and hence its action can therefore be properly designated as executive or administrative action within the meaning of Articles 17 and 126 of the Constitution.

It should be mentioned that all these cases (except that of *Ceylon Bank Employees' Union vs. Yatawara* (3) deal with breach of fundamental rights under the Constitution. But this is an application for a Writ of Mandamus and the question to be decided here is whether the respondent bank is a public body performing statutory duties, and no doubt these judgments are helpful to arrive at a decision.

The People's Bank and other State corporations were set up in this country within the last 50 years or so. Their purpose was to enable the State to venture into business undertakings. They strike a mean between the rigid bureaucratic control of civil servants and the flexibility of the private sector. Though the respondent bank was set up to assist and develop the co-operative movement and is subject to ministerial control, it does not thereby become a public body. It is primarily a commercial bank engaged in the business of banking. To be amenable to Mandamus, there must be an exercise of statutory powers by a public body and it is this quality which injects the element of public law.

In the case of *Weligama Multi-purpose Co-operative Society Ltd.*

vs. *Daluwatta* (7) where the petitioner-respondent, the Manager of the appellant society, was interdicted and served with a charge sheet, sought a Writ of Mandamus to compel the appellant society to pay him half a month's salary after the sixth month of interdiction in terms of Circular No.18 of 1975 dated 23.7.75 issued by the Secretary of the Co-operative Employees' Commission, it was held by five Judges of the Supreme Court that there was no public or statutory duty cast on the appellant society and dismissed the application.

In the recent English case of *R. vs. East Berkshire Health Authority, ex parte Walsh* (8), which was relied on by learned counsel for the respondent, it was held that the question whether a dismissal from employment by a public authority was subject to public law remedies depended on whether there were special statutory restrictions on dismissal which underpinned the employee's position. It was held that the remedy of judicial review is only available when an issue of public law is involved. In the said case reference was made to the case of *Malloch vs. Aberdeen Corp.* (9) where Lord Wilberforce said that it was the existence of statutory provisions which injects the element of public law necessary to attract the remedies of administrative law.

Having regard to the constitution and functions of the respondent Bank, I hold that there is no public duty or statutory duty in this case to call the petitioner for this interview. As is well known, this Writ will not issue for private purposes.

Staff Circular 186/82 (which adopts the Nihal Wiratunga Report on the Minister's directions) is only a circular and not a regulation having statutory force. The said circular lays down the policy and does not purport to provide for every step. The implementation of this circular is a private and internal matter of the respondent Bank. To call for recommendations from superior officers before a promotion is effected is a common practice based on prudence prevalent everywhere in the world and is nothing unusual. I am of the view that in the implementation of the circular the respondent Bank has a modicum of discretion as to whether recommendations should be sought from superior officers before effecting promotions.

For these reasons I uphold the preliminary objections of the respondent and I am of the view that the petitioner has no right in law for the reliefs claimed in his application.

I dismiss this application with costs payable to the respondent.

Application dismissed.
