CHOOLANIE
v
PEOPLE'S BANK AND OTHERS

SUPREME COURT
DR. SHIRANI A. BANDARANAYAKE, J,
DISSANAYAKE, J. AND
RAJA FERNANDO, J.
S.C. (FR) APPLICATION NO. 530/2002
MAY 31ST 2006
JUNE 21ST, 2006

Fundamental Rights – Article 12(1) of the Constitution – Equality before law and equal protection of the law – Need to give reasons – Concept of legitimate expectation – Discretion and/or unequal treatment.

The petitioner alleged that the decision of the 1st respondent-Bank to retire him from service with effect from 15.03.2002 was illegal, unlawful, arbitrary, irrational and inconsistent with the provisions of the Circulars No. 323/2001 dated 12.10.2001 and No. 323/2001 dated 19.11.2001 and thereby violated his fundamental rights guaranteed in terms of Article 12(1) of the Constitution.

Held:

(1) When there is no evidence to indicate that there is deliberate concealment of material facts from Court, an application cannot be rejected on account of the failure to comply with the requirement of *uberrima fides*.

(2) Although the 1st respondent Bank had not given reasons for their decision to the petitioner, the Bank should have revealed all such reasons to Court and denial of tendering reasons for their decision to the Supreme Court would undoubtedly draw an inference that there were no valid reasons for the refusal of the extension of service to the petitioner.

(3) Satisfactory reasons should be given for administrative decisions. A decision not supported by adequate reasons is liable to be quashed by Court.

Per Dr. Shirani Bandaranayake, J.

> "..... giving reasons to an administrative decision is an important feature in today's context, which cannot be lightly disregarded. Furthermore, in a situation, where giving reasons have been ignored, such a body would run the risk of having acted arbitrarily in coming to their conclusion."

Held further

(4) In general terms legitimate expectation was based on the principle of procedural fairness and was closely related to hearings in conjunction with the rules of natural justice. A promise or a regular procedure could give rise to a legitimate expectation. The doctrine of legitimate expectation has been developed both in the context of reasonableness and in the context of natural justice.

(5) An employee of the 1st respondent Bank would, while knowing that he could retire at the age of 55 years, have a legitimate expectation to service upto the age of 60 years on extensions of his service and therefore it could not be correct to state that the legitimate expectation of an employee would be to retire at the age of 55 years.

Held further

(6) The equal protection to all persons guaranteed by means of constitutional provisions, ensures that there would not be any discrimination between any two persons, who are similarly situated. However, there could be classifications among a group of people where such classification is reasonable and is not based on an arbitrary decision.

(7) What is necessary for a justifiable decision is that equals should not be treated unequally and the unequals should not be treated equally and the only differentiation that could be justified is, what could be classified on an intelligible basis and with a close nexus to the objective of the classification. Those who are similarly circumstanced, should be treated similarly.

(8) Although the Extensions of Service Committee was granted the authority to consider the extensions of service of the employees of the Bank, they

had to exercise their discretion according to law and undoubtedly having in mind the basic concepts stipulated in terms of Article 12(1) of the Constitution.

Per Dr. Shirani Bandaranayake,J.

"Article 12(1) of the Constitution ... deals with the right to equality and therefore the bank, being a State Institution should act within the four corners of the aforesaid constitutional provision. The guarantee of equality before the law ensures that among equals the law should be equal and should be equally administered."

(9) The refusal of the extension of service was taken arbitrarily and unreasonably and therefore the said refusal of the Bank to grant an extension of service to the petitioner is in violation of the petitioner's fundamental right guaranteed in terms of Article 12(1) of the Constitution.

Cases referred to:

1) *Gas Conversions (Pvt) Ltd. et al* v *Ceylon Petroleum Corporation et al* – SC (Application) No. 91/2002.
2) *Pure Spring Co. Ltd.* v *Minister of National Revenue* (1947) 1 DLR 501.
3) *Minister of National Revenue* v *Wrights' Canadian Ropes Ltd.* (1947) AC 109.
4) *R.V. Gaming Board for Great Britain, ex parte Benaim and Khaida* (1970) 2 Q.B. 417.
5) *R.V. Civil Service Appeal Board, ex parte Cunningham* (1991) 4 AER 310.
6) *Padfield* v *Minister of Agriculture, Fisheries and Food* (1968) A.C. 997.
7) *Doody* v *Security of State for the Home Department* (1993) 3 A.E.R. 92.
8) *Lloyd* v *McMohan* (1987) 1 AER 1118.
9) *Lal Wimalasena* v *Asoka Silva and Others* SC (Application) No. 473/2003, SC Minutes of 04.08.2005.
10) *Wijepala* v *Jayawardene* SC (Application) No. 89/95, SC Minutes of 30.06.1995.
11) *Manage* v *Kotakadeniya* (1997) 3 Sri L.R. 264.
12) *Suranganie Marapana* v *The Bank of Ceylon and Others* (1997) 3 Sri LR 156.
13) *Karunadasa* v *Unique Gem Stones* (1997) 1 Sri LR 256.
14) *W.P.A. Pathirana* v *The People's Bank and Others* SC (FR) 297/2004, SC Minutes of 12.12.2005.
15) *Schmidt* v *Secretary of State for Home Affairs* (1969) 2 Ch. 149.
16) *McInnes* v *Onslow-Fane* (1978) 1 WLR 1520.
17) *Breen* v *Amalgamated Engineering Union* (1971) 2 QB 175.
18) *Cinnamond* v *British Airports Authority* (1980) 1 WLR 582.
19) *R* v *Barnsley Metropolitan Borough Council, ex parte Hook* (1976) 1 WLR 1052.

20) *Attorney-General for New South Wales* v *Quin* (1990) 170 CLR 1.
21) *Attorney-General of Hong Kong* v *Ng Tuen Shiu* (1983) 2 AER 346.
22) *Council of Civil Service Unions* v *Minister for the Civil Service* (1984) 3 AER 935.
23) *Re Westminster City Council* (1986) AC 668.
24) *Ram Krishna Dalmia* v *Tendolkar* AIR 1958 SC 538.

APPLICATION complaining of infringement of Fundamental Rights.

J.C. Weliamuna for petitioner.
Ben Eliyathamby, PC with *Ronald* for respondents.

Cur.adv.vult.

June 20, 2007

DR. SHIRANI BANDARANAYAKE, J.

The petitioner alleged that by the decision of the 1st respondent Bank (hereinafter referred to as 'the Bank') to retire him from the service of the said Bank with effect from 15.03.2002 (P11) had violated his fundamental rights guaranteed in terms of Article 12(1) of the Constitution for which this Court had granted leave to proceed.

The facts of the petitioner's case, as submitted by him, are briefly as follows:

The petitioner, a Graduate had joined the Bank as an Officer – Grade IV in 1972. Later he was promoted to Grade III (II) in 1985, and Grade III (I), which is a managerial Grade, in 1996. When he had reached the age of 55 years on 23.08.1998 the bank had granted the petitioner his first extension of service upto 23.10.1999 (P4) and later he was granted his second extension from 23.10.1999 to 23.10.2000 (P5). He was granted his third extension from 23.10.2000 to 23.10.2001 (P6).

Since the petitioner was of the view that he had the capacity and the ability to serve the Bank upto the age of 60 years, in March 2001 he had applied for his fourth extension of service, which fell due on 23.10.2001 (P6).

By letter dated 10.08.2001, the Bank had informed him that his services were extended from 23.10.2001 to 28.02.2002 (P8).

In October 2001, the Bank had introduced the Circular No. 323/2001 dated 12.10.2001, that contained a new policy and scheme for extensions of service for the employees, which cancelled all previous circulars relating to extensions of service. The employees of

the Bank, who had made applications under the previous circulars were instructed to make fresh applications in terms with the aforementioned new circular on which the petitioner also had made a further application for extension of his service.

By letter dated 25.02.2002, the petitioner was informed that the Bank had decided to extend his services until 15.03.2002 (P11).

The petitioner was surprised by the said decision of the Bank to deny his extension of service as the following persons were granted extensions of services under the new scheme:

i. Mrs. P. Perera - 4th extension
ii. Mrs. Samitha Abeywickrama - 3rd extension
iii. Ms. J. Peiris - 2nd extension
iv. Mrs. C.K. Adhikaramage - 4th extension

The petitioner had appealed against the decision of not granting him a full year's extension of service to the General Manager of the Bank. The petitioner did not receive any response in relation to the said application. The petitioner therefore had stated that the decision of the bank to retire him from service with effect from 15.03.2002 is illegal, unlawful, arbitrary, irrational and inconsistent with the provisions of the Circulars No. 323/2001 (P9) dated 12.10.2001 and No. 323/2001 (1) (P10) dated 19.11.2001 and thereby had violated his fundamental rights guaranteed in terms of Article 12(1) of the Constitution.

The respondent took up a preliminary objection that the petitioner had misrepresented the material facts in his application and in accordance with the decision in *Gas Conversions (Pvt.) Ltd. et al* v *Ceylon Petroleum Corporation et al*[1], the petitioner's application should be rejected on account of the failure to comply with the requirement of *uberrima fides*.

The contention of the learned President's Counsel for the 1st and 2nd respondents was that the petitioner in his application to the Human Rights Commission on 18.03.2002, a copy of which was annexed to his petition (P12), had stated that he 'has been prematurely retired' by the Bank.

The Bank accordingly had taken the position that the age of retirement in terms of the People's Bank Staff Circular is 55 years and as the petitioner was over 55 years of age at the time he had retired, that it was a false claim and therefore lacks *uberrima fides*.

In *Gas Conversions (Pvt.) Ltd. et al (supra)*, which considered several decisions on suppression of material and/or misrepresentation, clearly held as to what amounts to such suppression and/or misrepresentation. Accordingly it was stated that,

> "... a petitioner invoking the fundamental rights jurisdiction must make a complete disclosure of all material facts and refrain from deliberately concealing material facts from the Court. If a petitioner has not made the fullest possible disclosure, such a person cannot obtain any relief in terms of Article 126 of the Constitution."

Thus it is clear that, what is necessary is to see whether there has been any attempt to 'deliberately conceal material facts from Court'. If there is no such deliberate concealment, then there cannot be any suppression and/or misrepresentation of material facts.

In this application, the respondents' contention was the position taken up by the petitioner in his application to the Human Rights Commission. A careful perusal of his statement clearly indicates that, it was the view expressed by the petitioner, considering the fact that extensions were granted to some of the employees upto the age of 60 years and in that context his retirement is premature. His application to the Human Rights Commission contains the details he had included in his petition to this Court and in my view the petitioner has not made any attempt to suppress or misrepresent the relevant material.

Accordingly, when there is no evidence to indicate that there is deliberate concealment of material facts from this Court, an application cannot be rejected on account of the failure to comply with the requirement of *uberrima fides*.

For the reasons aforementioned, I overrule the preliminary objection raised by the learned President's Counsel for the 1st and 2nd respondents and would turn to consider the petitioner's application on its merits.

The contention of the learned President's Counsel for the 1st and 2nd respondents was three fold.

Firstly, it was submitted that the granting of extensions of service is at the discretion of the management of the Bank and that there is no requirement to give reasons for such decisions taken by the Bank.

Secondly, it was contended that the previous Staff Circular No. 286/97 (P7) as well as the current Staff Circular No. 323/2001, (P9) clearly had designated and had laid down that 'the age of retirement of the Bank employees shall be 55 years' and therefore the legitimate expectation of all the petitioners would have been to retire at 55 years.

Thirdly, considering the extensions granted, which were cited by the petitioner as persons who were similarly circumstanced where the Special Extension Committee (R3), which had stated that the petitioner could be easily replaced and that said conclusions are not 'unreasonable, irrational or arbitrary'.

Having stated the contention of the 1st and 2nd respondents, let me now turn to consider the aforementioned submissions separately.

I. The need to give reasons

It is common ground that the extension of service of the employees of the Bank are governed by the terms specified in Staff Circular No. 323/2001 dated 12.10.2001. This Circular deals with several aspects pertaining to granting of extension of service and whilst several clauses make provisions regarding the basic requirements and the procedure for the extension of service implementation, clause 12 and clause 14(iii) refer to the specific need to give reasons in the event of non-recommendation of an application. Clause 12 has to be read with other clauses and therefore clause 11, clause 12 and clause 14 (iii), are reproduced below and are in the following terms:

"Clause 11 - All application forms duly filled as stated above should be sent to the Chief Manager H.R. Department to be received by the Chief Manager on or before 20th January 2002 without exception if they are recommended. Staff Department should process all applications received by them, and submit their applications to the Service Extension Committee by February 10, 2002. The Service Extension Committee should sit from 10th February through 20th February 2002 and forward papers to General Manager, who will finally decide on the individual applications by February 25th 2002.

Clause 12 - In the event the applications is/are not recommended, a **separate report stating the reasons** why it was not recommended should be sent directly to DGM (Est, HR, I and I) (emphasis added).

Clause 14(III) -When any member of the line management is not recommending an application for an extension, **a separate report has to be submitted by such manager, giving reasons for the same** to DGM (E, HR I and I) extension is received by such manager (emphasis added)."

A careful examination of clauses 12 and 14(iii) of the aforementioned circular clearly specifies that, if an application is not recommended by the line management, a separate report has to be submitted by such manager, with reasons as to his decision for the non-recommendation. This aspect clearly indicates that the Extensions of Service Committee needed all the relevant information including reasons for refusal, if any, for deciding on each applicant on their extensions of service and therefore the said Extensions of Service Committee should have maintained records in relation to all applicants, who had applied for extensions of service.

Learned Counsel for the petitioner contended that, except for the comments made by the Extensions of Service Committee, no detailed reasoning has been given in terms of clauses 11, 12 and 14(iii) of the Circular No. 323/2001 in relation to the petitioner's extension of service.

The petitioner, as referred to earlier, had submitted the application for his extension of service on 20.12.2001 (R2) to his immediate Superior Officer, who had recommended his application.

Thereafter the application was forwarded to the DGM, who had recommended his application on 27.12.2001.

According to the affidavit of the 1st and 2nd respondents, the Committee, which considered the Extension of Service had rejected the petitioner's application for extension as the petitioner could be replaced since his service did not warrant any specific skills.

The Extensions of Service Committee however had not given any reasons based on the aforementioned submissions and had only stated that it is possible to appoint a successor to the petitioner's position and the petitioner should be sent on retirement in terms of clause 10 of 323/2001. If this is to be regarded as the reasons given by the Extensions of Service Committee, I would find it difficult to agree with the respondents as there has not been any justifiable reason given with regard to the rejection of the petitioner's application for an extension. This position becomes much stronger, when one compares the recommendation received by some of the other officers, who had received extensions of service for a period of one year. For instance one Mrs. P. Perera had been granted an extension of service from February 2002 to January 2003 with the mere word 'recommended' (R4) entered by the AGM. However, no reasons were given for the aforesaid extension of service or differentiating the petitioner's application from that of the others, who were given a year's extension of service with recommendations similar to what was given to the petitioner.

Thus it is apparent that, although there may not be a requirement for the Extension of Service Committee to give reasons for their decision to the petitioner, the 1st respondent Bank owed a duty to this Court to reveal the reasons for their decisions. It would not be incorrect to presume that in order to arrive at a decision, the committee must consider several aspects in terms with the relevant clauses of Circular No. 323/2001 and more importantly that they should have revealed the reasons for their decisions. As stated earlier, although the reasons were not communicated to the petitioner, the Bank should have revealed all such reasons to this Court and denial of tendering reasons for their decisions to this Court would undoubtedly draw an inference that there were no valid reasons for the refusal of the extension of service to the petitioner.

In general terms, considering the general rule, the position taken by Court is that there is no duty to state reasons for judicial or administrative decisions *Pure Spring Co. Ltd.*, v *Minister of National Revenue*[2] at 501, (Statements of Reasons for Judicial and Administrative Decisions, Michael Akehurst, MLR Vol. 33, 1970, pg.154). Accordingly as Michael Akehurst has clearly pointed out, 'a statement of reasons is not required by the rules of natural justice, and

therefore there is no duty to state reasons for the decisions of Courts, juries, licensing justices, administrative bodies and tribunals or domestic tribunals' (*supra*).

Although the common law had failed to develop any general duty to provide a reasoned decision *Minister of National Revenue* v *Wrights' Canadian Ropes Ltd.*(3) at 109, *R* v *Gaming Board for Great Britain*, ex. p. *Benaim* and *Khaida*(4) at 417, *R* v *Civil Service Appeal Board*, ex. *P. Cunningham*(5) at 310, there are several exceptions to this general principle.

One clear method was through statutory intervention, which came into being by the recommendation of the Franks Committee (Cmnd. 218 (1957)). The Franks Committee recommended the giving of reasons ((*supra*) paras 98, 351), that came into being through the Tribunals and Inquiries Act, 1958, which was replaced by the Tribunals and Inquiries Act, 1992.

The Franks Report of 1957, ((*supra*), at para 98), in fact highlighted the issue as to why reasons should be given, referring to ministerial decisions taken, after the holding of an inquiry.

> *"It is a fundamental requirement of fair play that the parties concerned in one of these procedures should know at the end of the day why the particular decision has been taken. Where no reasons are given the individual may be forgiven for concluding that he has been the victim of arbitrary decision. The giving of full reasons is also important to enable those concerned to satisfy themselves that the prescribed procedure has been followed and to decide whether they wish to challenge the minister's decision in the courts or elsewhere. Moreover as we have already said in relation to tribunal decisions a decision is apt to be better if the reasons for it have to be set out in writing because the reasons are then more truly to have been properly thought out".*

Another method, and one which was extremely important from the practical point of view, indirectly imposed a requirement that reasons be stated and if not had decided that the result reached in the absence of reasoning is arbitrary. Thus in the well known decision in *Padfield* v *Minister of Agriculture*(6) at 997 the House of Lords decisively rejected the notion that the absence of a duty to state reasons precluded the

Court from reviewing the reasons for the decision. It was therefore stated in *Padfield (supra)* that,

> "If all the *prima facie* reasons seem to point in favour of his (the Minister's) taking a certain course to carryout the intentions of Parliament in respect of a power which it has given him in that regard, and he gives no reason whatever for taking a contrary course, the court may infer that he has no good reason and that he is not using the power given by Parliament to carry out its intentions."

Similarly in *Minister of National Revenue* v *Wrights' Canadian Ropes Ltd., (supra)*, which considered an appeal from an income tax assessment, the Privy Council stated that,

> *"Their lordships find nothing in the language of the Act or in the general law which would compel the Minister to state his reasons for taking action.... But this does not mean that the Minister by keeping silent can defeat the taxpayer's appeal.... The court is always entitled to examine the facts which are sworn by evidence to have been before the Minister when he made his determination. If those facts are ..... insufficient in law to support it, the determination cannot stand....."*

Accordingly an analysis of the attitude of the Courts since the beginning of the 20th century, clearly indicates that despite the fact that there is no general duty to give reasons for administrative decisions, the Courts have regarded the issue in question as a matter affecting the concept of procedural fairness. Reasons for an administrative decision are essential to correct any errors and thereby to ensure that a person, who had suffered due to an unfair decision is treated according to the standard of fairness. In such a situation without a statement from the officer, who gave the impugned decision or the order, the decision process would be flawed and the decision would create doubts in the minds of the aggrieved person as well of the others, who would try to assess the validity of the decision. Considering the present process in procedural fairness *vis-a-vis*, rights of the people, there is no doubt that a statement of reasons for an administrative decision is a necessary requirement. Referring to reasons, fair treatment and procedural fairness, Galigan (Due Process and Fair Procedure, Clarandon Press, Oxford, pg. 437) stated that,

"If the new approach succeeds, so that generally a statement of reasons for an administrative decision will be regarded as an element of procedural fairness, then various devices invented in the past in order to allow the consequences of a refusal of reasons to be taken into account will gradually lose their significance".

The necessity to give reasons was quite succinctly expressed in *Lloyd* v *McMahon*(7) at 1118), where Lord Donaldson, M. R. had concluded that the giving of reason was necessary, where McCowan, L.J., stated that the Court was not required to tolerate the unfairness of reasons not being given and Legalt L.J. had stated that the duty to act fairly extended to the duty to give reasons. The need for reasons in administrative decisions was described in very practical terms by Lord Mustill in *Doody* v *Security of State for the Home Department* (8) at 92, where he had stated that,

"a perceptible trend towards an insistence on greater openness, or if one prefers the contemporary jargon, 'transparency', in the making of administrative decisions."

The necessity to give reasons was considered by this Court, as referred to in Bandaranayake, J's judgment in *Lal Wimalasena* v *Asoka Silva and Others*(9) in *Wijepala* v *Jayawardene*(10), *Manage* v *Kotakadeniya*(11) at 264, *Suranganie Marapana* v *The Bank of Ceylon and Others*(12) at 156 and in *Karunadasa* v *Unique Gemstones*(13) at 256. In *Wijepala* v *Jayawardene* (*supra*), considering the necessity to give reasons, at least to this Court, Fernando, J., was of the view that,

"The petitioner insisted, throughout, that established practice unquestionably entitled him at least to his first extension and that there was no relevant reason for the refusal of an extension...

Although openness in administration makes it desirable that reasons be given for decisions of this kind, in the case I do not have to decide whether the failure to do so vitiated the decision. **However, when this Court is requested to review such a decision, if the petitioner succeeds in making out a *prima facie* case, then the failure to give reasons becomes crucial. If reasons are not disclosed, the inference may have to be drawn that this is because in fact there were no reasons – and so also, if reasons are suggested, they were in fact not the**

reasons, which actually influenced the decision in the first place" (emphasis added).

In *Manage* v *Kotakadeniya and others* (*supra*), where an application of a Post Master for his extension of service, upon reaching the age of 55 years was refused, Amerasinghe, J., was of the view that,

"the refusal to extend the service of the petitioner was not based on adequate grounds."

The order of retirement was thus quashed on the basis that the petitioner in that case was treated unequally and that there had been discriminatory conduct against the petitioner.

In *Suranganie Marapana* v *The Bank of Ceylon and Others* (*supra*), it was held that the Board failed to show the Court that valid reasons did exist for the refusal to grant the extension, which was recommended by the corporate management and therefore it was held that the refusal to grant the extension of service sought was arbitrary, capricious, unreasonable and unfair.

It is noteworthy to refer to the views expressed by Mark Fernando, J., in *Karunadasa* v *Unique Gemstones* (*supra*) with reference to the need to give reasons to a decision, where it was stated that,

".... whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial review commences, the decision "may be condemned as arbitrary and unreasonable"; certainly the Court cannot be asked to presume that they were valid reasons for that would be to surrender its discretion."

On a consideration of our case law in the light of the attitude taken by Courts in other countries, it is quite clear that giving reasons to an administrative decision is an important feature in today's context, which cannot be lightly disregarded. Furthermore, in a situation, where giving reasons have been ignored, such a body would run the risk of having acted arbitrarily in coming to their conclusion. These aspects have been stated quite succinctly in the following passage, where Prof. Wade had taken the view that, (Administrative Law, 9th edition, pg. 522),

"Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of law. ***A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all who exercise power over other.*** (emphasis added)"

And more importantly,

"The only significance of withholding reasons is that if the facts point overwhelmingly to one conclusion, the decision maker cannot complain if he has held to have had no rational reason for deciding differently, and that in the absence of reasons he is in danger of being held to have acted arbitrarily."

In the light of the aforementioned, it becomes important to refer to the decision in *Suranganie Marapana* v *The Bank of Ceylon and Others* (*supra*), which was discussed in detail in *W. P. A. Pathirana* v *The People's Bank and Others*[14].

In that case, the petitioner was the Chief Legal Officer of the respondent Bank. As she was to reach the age of 55 years on 27.11.1996 she applied to the Bank on 25.05.1996 for an extension of service for an initial period of one year. Her application was recommended by the Personnel Department in its draft Board minute, under exceptional circumstances. The Board of Directors took four months to decide on the application and after a lapse of a further month, the petitioner was informed on 22.10.1996 that her application had been rejected and she would be retired from 27.11.1996. Officers, who were of a comparable grade had been granted extensions. But she was refused for no reason. The Board failed to submit to Court its decision. The Chairman of the Bank stated in his affidavit that the refusal to extend her services was done *bona fide* and unanimously after a careful evaluation of her application and the need of the Bank to increase the efficiency of its Legal Department. This Court held that the Board failed to show the Court that valid reasons did exist for the refusal to grant the extension, which was recommended by the corporate management. Considering the question in issue the Court stated that,

".... the Personnel Department recommended that the petitioner's service be extended for a period of one year with effect from 27.11.1996 under exceptional circumstances. If, therefore, the Board of Directors thought otherwise, it should have done so only for valid reasons and on reasonable grounds. Even though Public Administration Circular No. 27/96 dated 30.08.1996 (P8), which was an amendment to Chapter 5 of the Establishments Code, does not have any direct application to the matter before us, it clearly sets out the attitude of the State in regard to the question of extension of service of public sector employees, when it states that where extensions of service of State Employees are refused ***"there should be sufficient reasons to support such decisions beyond doubt."*** *Even if the bank failed to give the petitioner the reasons for the refusal of her application for an extension of service, it undoubtedly became obliged in law to provide such reasons to this Court where the decision of the Board was challenged by the petitioner.* (emphasis added)"

The decision in *Suranganie Marapana* (*supra*) in my view is strongly supportive of the view taken by several decisions that satisfactory reasons should be given for the decisions taken by a Committee. In fact Prof. Wade (Administrative Law, supra at p. 226-229) has clearly stated that,

"The whole tenor of the case law is that the duty to give reasons is a duty of decisive importance which cannot lawfully be disregarded."

Having considered the necessity to adduce reasons for administrative decisions, let me now turn to examine the question of legitimate expectation.

II. Legitimate expectation

Learned President's Counsel for the Bank contended that the petitioner cannot be heard to say that her fundamental rights guaranteed in terms of Article 12(1) of the Constitution was violated since she had a legitimate expectation to work for the Bank beyond the age of 55 years, as if there was any such legitimate expectation with regard to serving at the Bank, such legitimate expectation would have been to serve only upto the age of 55 years.

This contention raises the basic issue as to how a legitimate expectation could arise in a situation such as extensions of service.

In general terms legitimate expectation was based on the principle of procedural fairness and was closely related to hearings in conjunction with the rules of natural justice. As has been pointed out by D. J. Galigan (Due Process and Fair Procedures, A study of Administrative Procedure, 1996, pg. 320),

> *"In one sense legitimate expectation is an extension of the idea of an interest. The duty of procedural fairness is owed, it has been said, when a person's rights, interests, or legitimate expectations are in issue."*

Discussing the concept of legitimate expectation, David Foulkes (Administrative Law, 8th Edition, Butterworths, 1995, pg. 290) has expressed the view that a promise or an undertaking could give rise to a legitimate expectation. In his words:

> *"The right to a hearing, or to be consulted, or generally to put one's case, may also arise out of the action of the authority itself. This action may take one of two, or both forms; a promise (or a statement or undertaking) or a regular procedure.* ***Both the promise and the procedure are capable of giving rise to what is called a legitimate expectation, that is, an expectation of the kind which the courts will enforce"*** (emphasis added).

An examination of the decisions pertaining to rights and privileges in the field of Administrative Law, clearly indicates that since the decision of Lord Denning M.R., in *Schmidt* v *Secretary of State for Home Affairs*[15] at 149, the concept of legitimate expectation had come into being to play an important role in the development of fairness. A long line of cases, since the decision in *Schmidt* (*supra*), had considered the concept of legitimate expectation *R* v *Gaming Board for Great Britain, ex. P. Benaim and Khaida* (*supra*), *McInnes* v *Onslow–Fane*[16] at 1520, *Breen* v *Amalgamated Engineering Union*[17] at 175, *Cinnamond* v *British Airports Authority*[18] at 582, *R* v *Barnsley Metropolitan Borough Council, ex. P. Hook*[19] at 1052.

Examining the decision in *Schmidt* (*supra*) and the Australian decision in *Attorney General for New South Wales* v *Quin*[20] at 1, P.P.

Craig (Legitimate Expectations, A Conceptual Analysis, L. Q.R. (1992) 108, pg. 79) had observed the applicability of the concept of legitimate expectation in administrative decisions. In his words,

> *"The foundation of the applicant's procedural rights is not simply that he has some legitimate expectation of natural justice or fairness.* ***The basis of the applicant's claim to protection is that he has a legitimate expectation of an ultimate benefit which is in all the circumstances felt to warrant the protection of that procedure,*** *in this instance his continued presence in the country"* (emphasis added).

Thus it is apparent that, as stated by *David Foulkes*, (*supra*) a promise or a regular procedure could give rise to a legitimate expectation that could be enforced by Court. This position is clearly illustrated by the decisions in *Attorney-General of Hong Kong* v *Ng Tuen Shiu*[21] at 346 and *Council of Civil Service Unions* v *Minister for the Civil Service*[22] at 935.

In *Ng Tuen Shiu*, (*supra*), Ng was an illegal immigrant. The government had announced a policy of repatriating illegal immigrants. According to the said policy each immigrant would be interviewed and each case was treated 'on its merits'. Ng was interviewed and his removal was ordered.

Ng complained that at the interview he was not allowed to explain the humanitarian grounds on which he would have been allowed to stay, but was allowed only to answer the questions put to him. It was stated that although Ng was given a hearing, it was not the hearing in effect, which was promised as what was promised was to give a hearing at which 'mercy' could be argued. The Judicial Committee agreed that, on that narrow point, the government's promise had not been implemented and that *Ng's case* had not been considered on its merits, and therefore the removal order was quashed. Accordingly Ng succeeded on the basis that he had a legitimate expectation that he would be allowed to present his case arising out of the government's promise that everyone affected would be allowed to do so.

In *Council of Civil Service Unions* (*supra*), the question of legitimate expectation arose, not due to a promise as in *Ng's* case *(supra),* but

out of a regular practice, which could reasonably be expected to continue. In this matter, the then British Prime Minister Mrs. Margaret Thatcher, issued an instruction that civil servants engaged on certain work would no longer be permitted to be members of trade unions. The House of Lords held that those civil servants had a legitimate expectation that they would be consulted before such action was taken, as it was an established practice for government to consult civil servants before making significant changes to their terms and conditions of service.

Having stated the applicability of legitimate expectation on the grounds of a promise and a procedure, let me now turn to examine the petitioner's case in the light of the aforementioned position.

It is not disputed that the 1st respondent Bank had been granting extension of services to its employees beyond the age of 55 years. It is also not disputed that the previous circulars, which dealt with the extensions of service did not refer to the age of retirement, but simply called for applications for extensions of service. For instance, clause 1 of Staff Circular No. 286/97(2) (P8), which refers to 'applications for extension of service' states that,

> *"As per instructions given in the above circulars, all employees who wish to remain in service on the basis of extension of service beyond 55 years of age should submit their applications for extension to the relevant line authorities of the subject employee, six months prior to the date of retirement."*

However, by Staff Circular No. 323/2001, (P10) of October 2001, amendments had been made to the existing policy for extension of service, which stated that the age of retirement of the Bank employees shall be 55 years. However, although the age of retirement was fixed at the age of 55 years, the Circular No. 323/2001 had made provision for the grant of extensions. In fact it is pertinent to note that the said circular clearly refers to the decision of the Board of Director of the 1st respondent Bank at their September 2001 meeting was to '*implement the policy and scheme for the extension of services*' of the employees of the Bank. The relevant paragraph of the aforesaid circular reads as follows:

"The Board of Directors at their meeting on September 28th 2001 decided to implement the policy and scheme for the extension of services detailed as stated below:

The age of retirement of the Bank employees shall be 55 years. However the General Manager/CEO and Management nominated by the CEO will grant extensions of the period of employment of a staff member for a specific period beyond 55 years of age and upto the age of 60 years at their discretion taking into consideration the following factors."

Accordingly, it is obvious that prior to the introduction of the new policy regarding extensions of service, extensions were considered and granted upto the age of 60 years and even under the new policy formulation, provision was made for extensions of service to be granted beyond the age at 55 years. This position was incorporated in Clause 9 of Circular No. 323/2001, where it was stated that,

"The new policy will be fully implemented with effect from 1st March 2002. In the meantime extensions will be considered in the normal way...."

It is not disputed that the petitioner had joined the Bank well before Circular No. 323/2001 came into effect. Moreover, he had been given extensions of service more than on one occasion, in terms of the previous circulars.

Learned Counsel for the petitioner strenuously contended that, although the age of retirement in the Bank was 55 years as was the case in most of the public sector establishments, this condition was subject to annual extensions being granted upto the age of 60 years.

If one has to consider the petitioner's position *vis-a-vis* the concept of legitimate expectation, it is apparent that he comes within both the categories explained by *David Foulkes (supra)*, which contains a promise and a regular procedure, which in other words could be categorized as substantive and procedural legitimate expectation.

It is to be noted that the doctrine of legitimate expectation has been developed both in the context of reasonableness and in the context of natural justice. (Administrative Law, Prof. Wade, 9th Edition, pg, 500).

In *Re Westminster City Council*[23], considering the question of legitimate expectation it was stated that,

> *"The courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation."*

Considering the major aspects of legitimate expectation, *Prof. Wade* (*supra*, at pg. 372) has clearly indicated that,

> *"inconsistency of policy may amount to an abuse of discretion, particularly when undertakings or statements of intent are disregarded unfairly or contrary to the citizen's legitimate expectation."*

Accordingly legitimate expectation must be given a broad interpretation as it could be used in more than one way utilizing the concept as the foundation for procedural fairness. Considering the concept of legitimate expectation being linked to the concept of procedural fairness, P. P. Craig (Administrative Law, 3rd Edition, 1994, pg 294-296) stated that this could depend on three different ways. *Firstly*, it could be on the basis of procedural rights for the purpose of protecting the applicant's future interests. *Secondly*, the concept is based on the foundation of procedural rights. *Thirdly*, the legitimate expectation could arise, where an applicant had relied on a particular *criteria*, whereas the defendants had applied a different one.

Considering the aforementioned it is clearly evident that the Bank had had a practice of granting extensions upto the age of 60 years. As referred to earlier, the circulars, which were introduced prior to Circular No. 323/2001, had clear provisions regarding such extensions, where the employees of the Bank had continued upto the age of 60 years on extensions. Moreover, it is not disputed that even under the present Circular, provision has been made for extensions beyond the age of 55 years. Although guide lines and/or *criteria* have been laid down for such extensions beyond the age of 55 years, the fact clearly remains that, in principle the Bank had accepted the position that extensions would be considered beyond the age of 55 years at least for a limited number of employees.

In such circumstances an employee of the Bank would, while knowing that he could retire at the age of 55 years, would have a legitimate expectation to service upto the age of 60 years on extensions of his service and therefore it would not be correct to state that the legitimate expectation of an employee would be to retire at the age of 55 years.

Having considered the aforementioned submissions let me now turn to examine the submissions made on the ground of discretion and/or unequal treatment.

III. Discretion and/or unequal treatment

The petitioner in paragraph 10 of his petition has set out four examples, where other officers were granted extensions. Whilst some of the officers had received the 2nd extension, others had obtained the 4th or the 5th extensions of service.

Having considered the aforementioned aspects let me now turn to examine the aspects relating to equal treatment and discretion based on decisions taken by the Bank and thereby the validity of the decisions that were taken without giving any reasons.

The petitioner's complaint was that the refusal to grant him an extension of his service for a period of one year was arbitrary and unreasonable and violative of Article 12(1) of the Constitution for which this Court had granted leave to proceed under Article 12(1) of the Constitution. Article 12(1) of the Constitution, refers to the right to equality and reads as follows:

"All persons are equal before the law and are entitled to the equal protection of the law".

The equal protection to all persons guaranteed by means of constitutional provisions, ensures that there would not be any discrimination between any two persons, who are similarly situated. However, this does not mean that there should not be any kind of classifications among a group of people. All classifications would not become arbitrary and thereby invalid. What is necessary is that, such classification should be reasonable and is not based on an arbitrary decision. Therefore if the following conditions could be satisfied, such classifications would not become arbitrary or unreasonable classifications:

(a) that the classification must be founded on an intelligible differentia, which distinguish persons that are grouped in from others, who are left out of the group; and

(b) that the differentia must bear a reasonable, or a rational relation to the objects and effects sought to be achieved (*Ram Krishna Dalmia* v *Tendolkar*)[24] at 538.

What is necessary for a justifiable decision is that equals should not be treated unequally and the unequals should not be treated equally and the only differentiation that could be justified is, what could be classified on an intelligible basis and with a close *nexus* to the objective of the classification. Accordingly it is evident that, those who are similarly circumstanced, should be treated similarly.

On a consideration of the circumstances of this application, it is not disputed that all the officers referred to in the application, who were either granted or refused extensions of service, belonged to the Bank. It is also not disputed that for all such employees the applicable Circular relating to their extensions was the Staff Circular No. 323/2001 dated 12.10.2001 (P10). Accordingly it is common ground that the extensions of service were considered on the basis of the provisions laid down in the aforementioned Circular to all the employees of the Bank without any reservations. Therefore regarding the extensions of service and the applicability of the Staff Circular No. 323/2001 (P10) there were no differentiation and all the employees of the Bank were grouped into one class. In such circumstances, it is apparent that there had been no classification to distinguish employees and to group them separately and therefore the Bank had regarded all of them as equals on the question of considering the employees, who had completed 55 years of age for extensions. Accordingly, all such applicant employees would have to be considered equally and there was no possibility for the petitioner to have been treated in a manner different to the treatment meted out to others, who were his equals.

Having said that the next question that has to be answered is the discretion that was vested with the Extensions of Service Committee, which was empowered to decide on extensions of service of the employees. There is no doubt that in today's context, for efficiency and smooth functioning of departmental management, discretionary power has to be conferred on administrative officers. However, such discretionary power cannot be absolute or uncontrolled authority as

such would be arbitrary and discriminatory, which would negate the equal protection guaranteed in terms of Article 12(1) of the Constitution. It would therefore be essential that a decision-making authority exercises its discretion taking into account relevant consideration on equal basis. Examining the discretionary powers and stressing the importance of the well-known House of Lords decision in *Padfield* v *Minister of Agriculture, Fisheries and Food* (*supra*), Lord Denning M.R. in *Breen* v *Amalgamated Engineering Union* (*supra*) stated that,

> "The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which is ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by *Padfield* v *Minister of Agriculture, Fisheries and Food (supra)*, which is a landmark in modern administrative law."

Accordingly, although the Extensions of Service Committee was granted the authority to consider the extensions of service of the employees of the Bank, they had to exercise their discretion according to law and undoubtedly having in mind the basic concepts stipulated in terms of Article 12(1) of the Constitution.

The petitioner submitted that upon reaching 55 years of age, the Bank had granted three annual extensions of service upon applications duly made by him. When the new Circular was introduced (P9), he was given an extension upto 28.02.2002, but as required by Clause 10 of the Circular (P9) he was required to re-apply under the new Circular and on his application he was given an extension only until 15.03.2002.

The petitioner had submitted his application to his Supervising Officer for his consideration. The aforesaid officer had recommended the petitioner's application. Thus it appears that the officer, who was functioning in a superior as well as in a supervisory capacity had thought the petitioner was a person, who should be recommended for his extension of service for a further year. The respondents contended that as the other employees can perform the duties of the petitioner, the Extensions of Service Committee

had decided not to extend the service of the petitioner beyond 15.03.2002.

Clause 14(II) of the Staff Circular (P9) clearly states that the Extensions of Service Committee has to *'scrutinize and recommend'* all application on a *'case by case basis'*. However, what has been produced before this Court does not indicate any kind of scrutiny and recommendations on a case by case basis.

Thus considering the aforementioned factual position of the petitioner's case, it is obvious that the Extensions of Service Committee had acted arbitrarily as well as unreasonably in relation to the application made by the petitioner.

There have been several cases pending before this Court regarding extensions of service by the employees of the Bank. As was stated in *W. P. A. Pathirana* v *The People's Bank* (*supra,* Bandaranayake, J.'s minority judgement), I am quite mindful of the competitive nature in the Banking sector and the efforts that have to be made in meeting with the challenges of the new millennium. However, there cannot be any dispute that the 1st respondent Bank is an Institution of the State. Therefore irrespective of the competitive nature in relation to their functions, the actions of the Bank could be challenged in terms of the provisions pertaining to fundamental rights enshrined in the Constitution and therefore the management of the Bank will have to function having in mind such guarantees that are enshrined in the constitution with regard to fundamental rights. *Although the Bank undoubtedly should have its freedom to exercise its discretion in re-organizing their organization and for that purpose to limit the grant of extensions of service, this has to be carried out, without any infringement of the guarantees enshrined in Article 12(1) of the Constitution.* Article 12(1) of the Constitution, as pointed out earlier, deals with the right to equality and therefore the Bank, being a State Institution should act within the four corners of the aforesaid constitutional provision. The guarantee of equality before the law ensures that among equals the law should be equal and should be equally administered.

On a consideration of all the aforementioned circumstances, the only conclusion that could be drawn is that the refusal of the extension of service was taken arbitrarily and unreasonably and therefore I hold that the said refusal of the Bank to grant an extension of service to the

petitioner is in violation of the petitioner's fundamental right guaranteed in terms of Article 12(1) of the Constitution. I accordingly declare that the petitioner was entitled to an extension of service for a period of one year with effect from 23.10.2002.

On a consideration of the totality of this matter, although there had been a violation of petitioner's fundamental right in terms of Article 12(1) of the Constitution, it could not be possible for him to be given an extension of service since the petitioner has now retired from the service of the Bank.

In the circumstances since the petitioner will not be granted any extensions, I direct the 1st respondent Bank to pay to the petitioner a sum of Rs. 50,000/- as compensation and costs. This amount to be paid within one month from today.

Dissanayae , J. - I agree

Raja Fernando, J. -- I agree

Application allowed.