

ABEYARATNE
v
JANATHA FERTILIZER ENTERPRISES LTD. AND OTHERS

SUPREME COURT
BANDARANAYAKE, J.
EDUSSURIYA, J. AND
YAPA, J
SC APPLICATION (FR) 311/2000
18TH OCTOBER AND 2ND DECEMBER 2002
AND 8TH JANUARY, 2003

*Fundamental Rights-Interdiction and dismissal of the petitioner without inquiry-
Denial of natural justice motivated by alleged ill will – Constitution, Article 12(1)*

The petitioner was the Finance Manager of the 1st respondent Company which was a Government Owned Company. He was appointed to that post on 10.05.1996. By a letter dated 02.03.2000, the 2nd respondent Chairman of the Company, called for the petitioner's explanation for alleged lapses and mismanagement of duty. The petitioner tendered a detailed explanation by his reply dated 06.03.2000. The 2nd respondent in his letter dated 23.03.2000 repeated the allegation of failure to complete accounts up to 1998 and informed that a charge sheet would follow. However, without any charge sheet or inquiry the 2nd respondent by his letter dated 10.04.2000 informed that the Board of Directors of the Company had decided to terminate the services of the petitioner. The petitioner was so removed notwithstanding a commendation by the previous Chairman in respect of his work for the Company as Finance Manager.

On the suggestion of the previous Chairman the petitioner had prepared a new "Sales Procedure" for the 1st respondent Company in order to prevent frauds and for better credit management. The procedure suggested *inter alia*, that whole sale dealers should furnish Bank Guarantees. The 2nd respondent treated the proposed procedure unfriendly towards him and suggested to the petitioner to modify it giving the 2nd respondent a discretion to waive the requirement of a Bank Guarantee.

Held:

In the circumstances the termination of the petitioner's services without an inquiry was contrary to natural justice, arbitrary and capricious and infringed the petitioner's rights under Article 12(1) of the Constitution.

Per Yapa, J

"Even if the petitioner had a black case yet he was entitled to a hearing."

"There appears to be some truth in the petitioner's claim that the 2nd and 3rd respondents were not well disposed towards him and continued to harass and humiliate him."

Cases referred to:

1. *General Medical Council v Spackman* (1943) AC 627 at 644
2. *Amaradasa v Land Reform Commission* 79 NLR 505
3. *Cooper v The Wandsworth Board of Works* 14 C.B. (NS) 180 at 194
4. *Ridge v Baldwin* (1964) AC 40
5. *Izadeen v The Director General of Civil Aviation* (1996) 2 Sri LR 348
6. *W. P. C. Fernando v Milk Industries of Lanka Company Ltd. "Milco" and others* SC 670/97 SC minutes of 05.11.1999

APPLICATION for relief for infringement of fundamental rights.

Peter Jayasekera with P. Liyanaarachchi and Bandula Wellala for petitioner.
Sanjeewa Jayawardena for 1st to 3rd respondents.