GUNARATNE AND OTHERS
V.
CEYLON PETROLEUM CORPORATION AND OTHERS

SUPREME COURT.
FERNANDO, J.
DHEERARATNE, J. AND
ANANDACOOMARASWAMY, J.
S.C. APPLICATION NO. 99/96.
13 JUNE AND 05 JULY, 1996.

Fundamental Rights - Infringement of Article 12(1) of the Constitution- Dealership Agreement granting authority to sell, supply and distribute petroleum - Summary termination of Dealership Agreement - Should concept of executive or administrative action in relation to a contract be confined only to the "threshold stage"?

For many years before 1994 the 1st Petitioner had - as an individual - a Dealership Agreement together with the requisite authority under section 5 E of the Ceylon Petroleum Corporation Act, No. 28 of 1961 as amended (by Act No. 5 of 1963) for running a filling station for the sale, supply and distribution of petroleum. The same filling station was taken over by the petitioners in partnership on a Dealership Agreement signed by the Petitioners on 23.3.94 and by 1st Respondent on 26.10.94 and the petitioners were granted authority with dealer discounts to sell, supply and distribute Lanka Two Star Petrol, Lanka Diesel and lubricants under section 5 E of the Act. By letter dated 4.1.96 signed by the Marketing Manager of the Ceylon Petroleum Corporation (9th Respondent) the said Dealership Agreement was terminated. The authority was thus cancelled.

Clause 12B of the Agreement and section 5H (4) of the Act had provisions for the termination of the Agreement.

The Board of the Corporation had passed a resolution to terminate the dealership of the Petitioners and to grant the Dealership authority to one B. K. Sarath Wickramasiri (11th Respondent). The resolution was implemented without notice to the Petitioners. The resolution did not indicate any reason for the Board's decisions. However according to the letter of termination dated 4.1.96 the Board had considered the contents of five warning letters dated 23.2.81, 21.11.84, 19.5.86, 27.10.88 and 29.6.93 and had decided to terminate, with immediate effect the Petitioners' Agreement and authority, acting under Clause 12 B and section 5H (4). The Corporation had a Marketing Manual setting out the procedure for the appointment of new dealers

but this procedure was not followed. The 11th Respondent stated had made an application for a dealership in or about August 1995 and an interview had been held in the 9th Respondent's office and he was aware the Corporation's officials had made investigations into his application. There were however no pleadings or prayer in respect of the 11th Respondent's dealership.

The 9th Respondent had tendered a Board paper dated 8.12.95 wherein he mentioned the five warning letters and stated that although in the last warning, the dealer had been cautioned that any further act of misconduct would result in termination, considering the said serious lapses, he recommends to the Board of Directors to terminate the dealership.

Held:

(1) It is not only at the "threshold" stage (i.e.at or before the time the contract was entered into) that the Board's action could be regarded as executive or administrative action but also during the subsistence of the contract, The impugned resolution was administrative or executive action although it involved a contract and was in violation of Article 12(1).

(2) The Board was not entitled to cancel the authority or to terminate the Agreement without reasons. Further the Board was not made aware that four of the five warnings brought to its notice had occurred long before the current agreement and authority, and that the 2nd to 4th Petitioners were not involved in them; these should not have been taken into consideration. The fifth warning was in respect of an incident (defective pump) which had been dealt with, and was in any event insufficient to justify the termination, having regard to the Corporation's responsibility to supply and maintain equipment.

(3) The Agreement and the authority were intimately linked, and were in fact dealt with together and the first limb of the impugned resolution was therefore not severable. That part of the resolution was bad. However the second limb of the resolution (appointing 11th Respondent) was distinct and severable.

(4) There being no pleadings and prayer in respect of the appointment of the 11th Respondent it is not just and equitable to make any order affecting that appointment.

(5) The Petitioner's fundamental rights under Article 12(1) have been violated by the 1st to 8th Respondents by the termination of the agreement and the cancellation of the authority.

Cases referred to:

1. *Roberts v. Ratnayake* (1986) 2 Sri L.R. 36.
2. *Wijenaike v. Air Lanka* (1990) 1 Sri LR 293.
3. *Dahanayake v. De Silva* (1978-79-80) 1 Sri LR 47, 53-54.

APPLICATION for relief in respect of infringement of fundamental rights under Article 12(1) of the Constitution.

Tilak Marapana P.C. with *Nalin Ladduwahetty, Jayantha Fernando and Anuja Premaratne* for Petitioners.

A.A. de Silva with *Mahinda Ralapanawe* for 1st to 9th Respondents, *J.C. Weliamuna* for the 11th Respondent.

Cur. adv.vult.

July 31, 1996.

FERNANDO, J.

The 1st Respondent, the Ceylon Petroleum Corporation, entered into a Dealership Agreement ("the Agreement") for the sale of petroleum products with the four Petitioners (who were carrying on business in partnership) in respect of the Kottawa Lanka Filling Station. That Agreement was signed by the Petitioners on 24.3.94 and by the 1st Respondent on 26.10.94. The Petitioners were granted authority to sell, supply and distribute petroleum under and in terms of section 5E of the Ceylon Petroleum Corporation Act, No. 28 of 1961, as amended. The Petitioners complain of the infringement of their fundamental rights under Article 12(1) by the 1st Respondent and the 2nd to 8th Respondents (the Chairman and Directors of the 1st Respondent) by reason of the summary termination of that Agreement, communicated by letter dated 4.1.96 signed by the Marketing Manager, the 9th Respondent, in consequence of which possession was taken on the same day; and the filling station was handed over to the 11th Respondent, the new dealer. There was no plea or prayer in respect of the cancellation of that authority.

For many years before 1994, the 1st Petitioner had - as an individual - a Dealership Agreement, together with the requisite authority under section 5E, in respect of the same filling station.

Clause 12B of the Agreement, and section 5H(4) of the Act, make the following provisions for the termination of the Agreement, and the statutory authority, as follows:

> Clause 12B : If the Dealer does not in the opinion of the General Manager perform his duties and obligations as a Dealer of petroleum products of the Corporation faithfully, diligently and efficiently or if he defaults in complying with the terms, covenants and conditions of this Agreement or the terms and conditions under which commissions and allowances are payable to him referred to in paragraph 12 above, the Corporation shall be entitled to terminate agreement without any notice whatsoever. The Corporation shall also be entitled to terminate this Agreement after three months' notice in writing to the Dealer and the Dealer is entitled to terminate this Agreement after three months' notice in writing given to the Corporation. The three months' notice by the Dealer shall commence to run from the date on which the Corporation acknowledges the Dealer's written notice. Notwithstanding the above the Board of Directors may by a resolution passed at a meeting of the Board of Directors terminate this Agreement **without notice and without assigning any reasons whatsoever.'**
>
> Section 5H : "The following provisions shall be applicable in the case of the exercise of the power to grant a written authority conferred on the Minister, any authorized officer or the Board of Directors by any of the sections 5B, 5E, 5F and 5G : .....
>
> ..... (4) The Minister, such officer or such Board may, in his or its **absolute discretion**, decide at any time to cancel such authority"

In an affidavit sworn on behalf of the 1st Respondent, the Deputy Marketing Manager produced the following Board resolution, which he said had been passed on 2.1.96:

> "BOARD PAPER of 8.12.95 - TERMINATION OF DEALERSHIP OF .. KOTTAWA LANKA FILLING STATION - from Manager Marketing.
>
> Board decided :

i) to terminate the dealership of Kottawa Lanka Filling Station at the Corporation Controlled Lanka Filling Station situated at Kottawa and cancel the authority granted to him under section 5H(4) of Ceylon Petroleum Corporation Act, No. 28 of 1961 as amended by Ceylon Petroleum Corporation (Amendment) Act, No. 5 of 1963 read with section 12(b) [sic] of the Dealership Agreement to sell, supply and distribute Lanka Two Star Petrol, Lanka Auto Diesel and Lubricants.

ii) to appoint Mr. B.K. Sarath Wickramasiri of No. 201, Janarajaya Mawatha, Divulapitiya, Boralesgamuwa and grant him authority under section 5E of Ceylon Petroleum Corporation Act, No. 28 of 1961 as amended by Ceylon Petroleum Corporation (Amendment) Act, No. 5 of 1963, read with the terms and conditions set out in the Dealer Agreement to be signed hereinafter to sell, supply and distribute Lanka Two Star Petrol, Lanka Auto Diesel and Lubricants and grant him Corporation Controlled Dealer discounts."

The document produced, though certified as a true copy, regrettably failed to indicate that it was in fact an extract from the Board minutes, and the date of the Board meeting. Mr. A. A. de Silva for the 1st to 9th Respondents submitted that the Board meeting had been held on 12.12.95. Although there was some uncertainty as to the date of the Board Meeting, learned President's Counsel for the Petitioners did not dispute the fact that the Board had passed that resolution. It had been implemented without any notice to the Petitioners. That resolution did not indicate any reason for the Board's decisions. However, according to the letter of termination dated 4.1.96, the Board had considered the contents of five warning letters dated 23.2.81, 21.11.84, 19.5.86, 27.10.88, and 29.6.95, and had decided to terminate, with immediate effect, the Petitioners' Agreement and authority, acting under clause 12B and section 5H(4).

When this matter was taken up for hearing on 13.6.96, we pointed out to Mr. A.A. de Silva that there was no material to indicate why the Board had decided to terminate the Petitioners' Agreement and to appoint the 11th Respondent in their place. When the hearing was resumed on 5.7.96, he tendered a copy of the Board paper, dated 8.12.95, submitted by the 9th Respondent. This stated that the Dealership was

operated by the 1st Petitioner in the name and style of Kottawa Lanka Filling Station; that there were four partners in the partnership; that there had been instances of "complaints against **the incumbent dealer**" and that disciplinary action had been taken, mentioning only those five warning letters; and concluded:

> "Although in our last warning, we have cautioned the dealer that any further act of misconduct would result in the termination of the dealership, considering the above serious lapses on their part, I recommend to the Board of Directors to terminate the dealership."

It further stated that the 11th Respondent had sought a dealership of a Corporation-controlled outlet. Board approval was requested in terms identical to the resolution subsequently passed.

There was no information as to how the 11th Respondent had come on the scene. The 11th Respondent stated that he had made an application for a dealership in or about August 1995, and that an interview was held in the 9th Respondent's office. He added that he was aware that officials of the 1st Respondent had made investigations into his application. Although the Petitioners originally made allegations of improper political influence, involving the 10th Respondent, a Member of Parliament, in regard to the selection of the 11th Respondent, learned President's Counsel conceded at the hearing that these could not be maintained. We therefore reject those allegations but as the 10th Respondent did not file papers, and was absent and unrepresented at the hearing, an order for costs is not justified.

The Petitioners contended that the 1st Respondent's Marketing Manual set out the procedure for the appointment of new dealers. The Manual required the Area Supervisor to obtain at least three applications, and to forward these to the Area Manager with certain information relevant to financial capacity and standing as well as his own comments; and the Area Manager to interview each candidate and scrutinize certain documents, and to submit full particulars of all candidates with his recommendation to the "Head of Function", who was then required to -

"Prepare a Board Paper recommending the candidate whom he considers best suited for appointment or leave it to the Board to make their selection if more than one candidate is equally eligible and suitable for appointment."

The Respondents do not deny that this procedure was not followed. They state that the Board was vested with authority to appoint dealers, and that "the manual referred to has been prepared purely as a guideline in case of selection for appointment of new dealers for new areas". However, they do not explain how the 11th Respondent was selected. Whether it was for an existing filling station, or for a new filling station, the interests of the 1st Respondent and the public required that care be exercised when selecting a new dealer; and I find it difficult to accept, in the absence of clear provision to that effect in the Manual, that less care was required for selection of a new dealer for an existing station.

Learned President's Counsel contended on behalf of the Petitioners that the termination of the Agreement was wrongful because the Respondents were not entitled to rely on matters which had occurred before the Agreement had been entered into; because the Board had not been made aware that four of the five warnings were in respect of past incidents for which the 2nd to 4th Petitioners were not responsible; because the fifth incident was one which had been inquired into and concluded six months earlier, and could not be re-opened; and because in any event that incident did not justify termination.

Mr. A. A. de Silva contended that:

(1) the action taken by the Board to terminate the Applicant and the authority under section 5E did not constitute "executive or administrative action" within the meaning of Article 126; firstly, because the Board took a commercial decision in respect of a purely commercial transaction; secondly, because it was an act done taken in the exercise of the 1st Respondent's contractual rights under a concluded contract and it was only at the "threshold" stage (i.e. at or before the time the contract was entered into) that, if at all, it could be regarded as "executive or administrative action". He cited *Roberts v Ratnayake*,[1] and *Wijenaike v Air Lanka*,[2] and some of the Indian cases mentioned therein.

(2) the Board was entitled to terminate the Agreement and the authority, without notice and without any reason;

(3) because the Petitioners had claimed no relief in respect of the cancellation of the authority, this Court could not grant any relief;

(4) the Board was entitled to rely on past incidents, the 1994 partnership was between the original dealer, the 1st Petitioner, and members of his family; and there were also other incidents, not mentioned in the Board paper, which had taken place before and after the 1994 Agreement, which justified the termination.

Mr. Weliamuna, on behalf of the 11th Respondent, contended that the Petitioners were required by Rule 44(1) (d) of the Supreme Court Rules, 1990, to specify the reliefs claimed; that the Petitioners neither pleaded that the appointment of the 11th Respondent was wrongful, nor prayed for relief (by way of declaration, quashing or otherwise) in respect of that appointment; and that whatever relief this Court might grant in regard to the termination of the Petitioners' Agreement, it should not interfere with the 11th Respondent's appointment.

Section 5B of the Act confers a monopoly on the 1st Respondent in respect of the right to import, export, sell, and distribute petrol, kerosene, diesel oil and furnace oil (and petroleum of any other class or description specified by the Minister in a vesting order under section 5C). No person can deal in such products except with the written authority of the Board of Directors of the 1st Respondent. Section 5F prohibits the establishment and maintenance of facilities and equipment for the sale, supply and distribution of such petroleum products, by any person who does not have the written authority of the Board under section 5E. Although prior to 1961, the State was not engaged, directly or through a State agency, in the provision of petroleum products for the community, that is now part of the service provided by the State for the people; even the pricing of such products is influenced by Government policy and is not solely on commercial considerations. The supply, sale and distribution of petroleum products is thus a function of the Executive. Samarakoon, C.J., said in *Dahanayake v de Silva*,[3] :

"Political ideology at the time considered that, petroleum being an essential service for the community, it should be the responsibility of and the sole business of the Government of the country ..... Petroleum has ceased to be a mere consumer item of private trade and is now the concern of governments at both national and international levels ..... when [the Corporation] enters into contracts for services for the sale and distribution of petroleum products, it does so as agent of the State."

Similarly in *Perera v U.G.C.*,[4] it was held that University education was a governmental function, which had been assigned to the University Grants Commission, as an organ or delegate of the Government, and the selection of students for admission was "executive or administrative action". The grant of authority under section 5E is plainly a statutory function. A dealership agreement is not a distinct, or severable, matter, but intimately connected with that authority. Indeed, it seems to be referable to section 5F. Entering into such agreements and granting such authority - and cancelling them - cannot be regarded as purely commercial decisions in commercial transactions : it constitutes executive or administrative action.

Mr. de Silva argued, however, that it was only at the "threshold" stage of entering into a dealership agreement that "executive or administrative action" was involved. When he was reminded that there were numerous decisions in which this Court had given relief in respect of acts done in relation to contracts long after the "threshold" stage had been passed, he submitted that that was in regard to contracts of employment, and maintained that the position was different in regard to other contracts.

I cannot accept this contention. The principle of equality embodied in Article 12 does not make any exception, in regard to contracts in general, or particular types of contracts, or the stage at which a contract is. Indeed, the proviso to Article 12(2), as well as Article 12(3), militate against the contention that contracts are excluded. As for the submission that action taken after a contract has been entered into ceases to be executive or administrative action, that would give rise to a host of anomalies. That submission, while acknowledging that dis-

crimination (e.g. on the ground of race, religion, or political opinion) at the stage of awarding or granting a contract, dealership or licence, can be remedied under Article 126, leaves it open, soon thereafter, to cancel that same contract, dealership or licence on the very same grounds doing indirectly that which could not have been done directly. Another consequence of Mr. de Silva's submission that the "threshold" restriction does not apply to contracts of employment would be that if the Corporation appoints employees to manage some filling stations, and dealers to manage others, the act of terminating the services of the former would be "executive or administrative action", but the termination of a dealership for identical reasons would not.

In view of Mr. de Silva's concession that the distinction as to the "threshold" stage does not apply to contracts of employment, it is unnecessary to refer to *Wijenaike v Air Lanka*, except to point out that it concerned a contract of employment. The majority decision in *Roberts v Ratnayake* appears to have been based on the principle that the termination of the contract in that case was not done under any statutory provision, and that equality before the "law" only ensured equality in respect of protection under statutory provisions, (see pp. 43, 48, 118, 119). The present case is distinguishable because the Petitioners' Dealership was not a purely private contract, but is referable to section 5F; it was inextricably connected to the authority granted under section 5E, and was not severable; and there was a single act of termination which was primarily referable to section 5H(4). Further, with respect, the majority decision seems to have proceeded upon a narrow view that Article 12 is restricted by the definition of "law" (as meaning a statute), and I take the broader view that the principle of equality before the law embodied in Article 12 is a necessary corollary of the concept of the Rule of Law which underlies the Constitution (*Perera v Jayawickrema*[4]). Article 12 therefore prohibits arbitrary, capricious and/or discriminatory action. Since I entertain no doubt as to the scope of Article 12, I must respectfully decline to examine other decisions from other jurisdictions with a view to importing restrictions which are plainly lacking.

It is now well settled that powers vested in the State, public officers, and public authorities are not absolute or unfettered, but are held in trust for the public, to be used for the public benefit, and not for

improper purposes. Even assuming that the Board of the 1st Respondent was not obliged initially to disclose the reasons for its decision, nevertheless when that decision is being reviewed in the exercise of the fundamental rights jurisdiction of this Court, the burden is on the Respondents to establish sufficient cause to justify that decision, and this Court can scrutinize the grounds for the decision.

To justify the termination, the Respondents relied on a number of alleged acts of misconduct and/or inefficiency on the part of the Petitioners (in addition to the five letters mentioned in the Board paper and the letter of termination) and these included acts done both before and after the 1994 Agreement was entered into.

In my view neither clause 12B nor section 5H(4) empowers the Board to terminate a dealership or cancel an authority on account of matters which occurred before that dealership or authority was granted (except possibly where they were not known at that time). To hold otherwise would penalise the 2nd to 4th Petitioners for acts done at a time when they had no control or responsibility for them. I hold that allegations in respect of the period prior to March 1994 cannot be relied on in justification.

In regard to matters occurring after March 1994, the Respondents have referred to two or three instances in which, upon a routine inspection, pumps have been found to be delivering less than the proper quantity. However, admittedly, those pumps are the 1st Respondent's property; it is its responsibility to calibrate them correctly; and a dealer must not meddle with them. Mr. de Silva contended that it was the Petitioners' responsibility to test the pumps every day. If such tests had been done, and the pumps were found to be defective, the Petitioners should have reported the matter to the 1st Respondent, and any such complaint should have been recorded in the log book maintained by the Petitioners. The Petitioners' log book was taken over by the 1st Respondent on 4.1.96, and despite an order made by this Court on 2.2.96 directing the 1st and 2nd Respondents to produce it, it was not made available at the hearing. Further, some of the inspection reports produced by the Respondents also showed instances where the pumps were overdelivering. In any event, it was primarily the responsibility of the 1st Respondent to supply pumps of good quality

and in working order, and the Petitioners cannot be held solely or mainly accountable for their defects. It would have been unreasonable for the Board to have terminated the Dealership on account of such defects in these circumstances; and in fact the relevant Board paper made no reference to them, and the Board could not have taken them into consideration.

The Respondents also produced photocopies of six cheques issued by the Petitioners (drawn on the Seylan Bank, Kottawa) to the 1st Respondent in payment for goods supplied, for sums aggregating to Rs 662,126/19, dated 29.12.95, 30.12.95, 31.12.95 and 3.1.96, which had not been honoured upon presentation. Although the entries are not clear, it would seem that these were presented on 4.1.96 and subsequent dates. It is not known when each of these cheques were received by the 1st Respondent, and it would seem that the normal course of clearing ensured that cheques issued by the Petitioners would be presented only after two or three days to the Petitioners' bank at Kottawa. The matter has not been clarified, but it is quite possible that the cheques were presented after the Petitioners were compelled to hand over the filling station on 4.1.96. Mr de Silva strenuously contended that the Petitioners had acted improperly in issuing those cheques because, he argued, they did not have funds in their account at the time of issue; we do not know what funds they had at the time of issue, but even if they did not then have sufficient funds their obligation was 'to ensure that there were sufficient funds at the time of presentation; and if in consequence of the takeover, they did not deposit funds, or make other arrangements to enure that the cheques drawn in favour of the 1st Respondent would be met, they can hardly be faulted. The letter of 4.1.96 expressly stated that payment would be made for stocks taken over; Mr de Silva admitted that no payment had been made, and that the value of the stocks taken over was Rs 577,587. He also conceded that the 1st Respondent had not taken any action in respect of the dishonoured cheques. The dishonouring of those cheques was not a matter which in any way influenced the decision of the Board, and perhaps occurred after the takeover, and the 1st Respondent cannot now rely on it to justify the termination of the Agreement.

The only allegation which remains for consideration is that referred to in the warning letter dated 29.6.95. On Saturday, 27.5.95, one pump

was found to be defective, in that occasionally it did not return to zero after recording a delivery of fuel. According to the relevant page of the log book, a photocopy of which page alone the Petitioners had kept, probably in connection with the inquiry into that incident, this defect had been reported by telephone at 3:10 p.m. that very day. Similar complaints were made on 9.5.95, 29.5.95 and 20.6.95. On Sunday, 28.5.95, an employee of the 1st Respondent who had come to purchase fuel, found that the pumper was about to commence delivery although the pump had not returned to zero after the previous delivery. The Petitioners were asked to submit an explanation; this they did, saying that the pumper was a trainee, who had been dismissed in consequence, and asking for forgiveness. By letter dated 29.6.95, the Petitioners were warned that although disciplinary action could have been taken in terms of the Agreement, no such action would be taken in that instance, but that any future irregularity would be reported to the Board for action in regard to the Dealership Agreement. Being its equipment, the 1st Respondent was under an obligation to ensure that it was in proper working order, and we have been given no explanation as to why it was not.

The 1st Respondent was not entitled to rely on that incident, since it had been dealt with; in any event, having regard to the circumstances in which it happened, it did not justify termination; and the Board was not made aware that four of the five warnings referred to in the Board paper had occurred before the Dealership Agreement came into operation. If the Directors had been asked to terminate the Agreement and the authority on account of that single incident, it is likely that the Directors, as fair and reasonable persons, would at least have probed the matter more deeply, and perhaps given the Petitioners an opportunity to state their position. Had they been asked to terminate the Agreement and the authority, summarily and without any reason, it is possible that they might have refused. However, I need not speculate about those matters, because none of the Directors have sworn affidavits asserting that they would have terminated on account of that single incident or without any reason; nor has the 9th Respondent ventured any explanation in that regard.

The Board resolution was in two parts. The first terminated the Agreement and the authority; the second appointed the 11th Respond-

ent as the new dealer. To that extent, the resolution was severable. However the first limb of the resolution was not severable, particularly as the dealership and the authority were so intimately connected. I hold that the first limb of the resolution was in violation of the Petitioners' rights under Article 12(1) , and though they have not specifically asked for it, it follows that they are entitled to a declaration that their fundamental rights under Article 12(1) have been infringed by the cancellation of the authority as well as by the termination of the Agreement.

I uphold, Mr. Weliamuna's contention that the Court ought not to make an order which would affect the 11th Respondent's dealership in the absence of the necessary pleadings and prayer- not because of the technical defect, but because the case presented by the petitioners did not make it sufficiently clear to the 11th Respondent that his dealership was in jeopardy; and the failure of the 1st Respondent to place the necessary material in regard to the preliminary steps taken prior to the appointment of the 11th Respondent might have been due to that lapse. It would not be just and equitable to compel the 11th Respondent to surrender his dealership. The Petitioners have averred that they had a yearly turnover of around Rs 61 million and a yearly profit of around Rs 2 million.

In the counter affidavits filed on behalf of the Respondents this has not been denied. The 1st Respondent was in a position to place documentary evidence, as to the value of the petroleum products supplied to the Petitioners, and their margin of profit. I accept the Petitioners assessment of the loss caused to them.

To sum up, I hold that passing the impugned resolution was "administrative or executive action", although it involved a contract, and was in violation of Article 12(1) ; the Board was not entitled to cancel the authority or to terminate the Agreement without reasons; further, the Board was not made aware that four of the five warnings brought to its notice had occurred long before the current Agreement and authority, and that the 2nd to 4th Petitioners were not involved in them; these should not have been taken into consideration; the fifth warning was in respect of an incident which had been dealt with, and was in any event insufficient to justify the termination, having regard to the 1st Respond-

ent's obligations to supply and maintain equipment; the Agreement and the authority were intimately linked, and were in fact dealt with together, and the first limb of the impugned resolution was therefore not severable. That part of the resolution was bad. However, the second limb of that resolution was distinct and severable; there being no pleadings and prayer in respect of the appointment of the 11th Respondent, it is not just and equitable to make any order affecting that appointment.

I grant the Petitioners a declaration that their fundamental rights under Article 12(1) have been violated by the 1st to 8th Respondents by the termination of the Agreement and the cancellation of the authority, and award them compensation and costs in a sum of Rs 75,000. Had the Agreement been terminated with notice in terms of clause 12B, the petitioners would have made profits for a further period of three months, and that according to their uncontradicted assessment would have been Rs 500,000. I therefore further direct the 1st Respondent, at its option, **either** to grant the Petitioners (within six months from today) a dealership in respect of the same or another mutually acceptable filling station **or** to pay them compensation in a sum of Rs 500,000.

DHEERARATNE, J. – I agree.

ANANDACOOMARASWAMY, J. – I agree.

Relief granted.