SANGADASA SILVA
v.
ANURUDDHA RATWATTE AND OTHERS

SUPREME COURT
DHEERARATNE, J.,
WADUGODAPITIYA, J. AND
GUNAWARDANE, J.
S.C. APPLICATION NO. 251/95 (F.R.)
JANUARY 22ND AND FEBRUARY 11TH, 1998.

Fundamental Rights – Termination of agreement for dealership in petroleum products – Unjust or Arbitrary termination – Political motive – Articles 12 (1) and 12 (2) of the Constitution.

The petitioner was a dealer in petroleum products for many years on the basis of an agreement with the Ceylon Petroleum Corporation, the second respondent. On 26.6.95 persons claiming to be from the Corporation visited the petrol station with a letter and asked the petitioner's son who was the manager to vacate the premises and hand it over to them. The petitioner's son declined to do so in

the absence of the petitioner and temporarily closed the petrol station. The same evening, according to the petitioner, a group of thugs arrived and took over the petrol station forcibly. According to the Area Manager of the Corporation, he took over the premises with the assistance of the Police. Thereafter, the business was handed over to the 3rd respondent Company which had been incorporated only on 09.06.95 and whose Directors were all government supporters. The petitioner had been a close friend of late R. Premadasa, the former President and a strong supporter of the United National Party. The Marketing Manager of the Corporation, who was not a member of the Board of Directors of the Corporation, averred that the petitioner's dealership was cancelled by a letter dated 26.6.95 (2R9) issued by him pursuant to a special resolution of the Board of Directors of the corporation for alleged violations of the dealership agreement. But the relevant Board paper and the decision of the Board were not produced to Court; nor did the Chairman or any of the Directors file an affidavit explaining the reasons for the termination of the petitioner's dealership. Besides 2R9 was never served on the petitioner, nor was any evidence of a decision to award the dealership of the petrol station to the 3rd respondent company produced to Court.

Held:

1. The action taken by the respondent Corporation to terminate the petitioner's dealership amounted "executive or administrative action" within the meaning of Article 126 of the Constitution.

2. The action of the 2nd respondent Corporation to terminate the petitioner's agreement and to appoint the 3rd respondent in his place were arbitrary, capricious and discriminatroy; it was also politically motivated and violative of the petitioner's rights guaranteed by Articles 12 (1) and 12 (2) of the Constitution.

Cases referred to:

1. *Dahanayake v. de Silva* (1978 - 79 - 80) 1 Sri LR 47.
2. *Kuruppuge Don Somapala Gunaratne et al v. Ceylon Petroleum Corporation et al* SC Application 99/96 SC Minutes 31 July, 1996.
3. *Wickrematunge v. Ceylon Petroleum Corporation* et al 1998 1 Sri LR 201.

APPLICATION for relief for infringement of fundamental rights.

Romesh de Silva P.C with *Geethaka Gunawardane* for petitioner.

K. Sripavan D.S.G for 1st and 4th respondents.

P. A. D. Samarasekera, P.C with *Keerthi Sri Gunawardana, Sanjeewa Jayawardena* and *Palitha Silva* for 2nd respondent.

Percy Wickramasekera, with *Henry Seneviratne* and *Mrs. Shanthi Silva* for 3rd respondent.

Cur. adv. vult.

April 3, 1998.

WADUGODAPITIYA, J.

In 1952, the Shell Company of Ceylon Ltd. appointed the petitioner as a dealer in petrol, diesel and other petroleum products at premises No. 291, Dr. Dannister de Silva Mawatha, Colombo 9. Although after nationalisation, he continued the said business under the Ceylon Petroleum Corporation, the petitioner states that in 1973, the above premises was taken over, allegedly due to political reasons, but handed back to him in late 1977. He thereafter continued to operate the petrol station at the above premises till 26.6.95, on which day it was taken over by the 2nd respondent.

The petitioner states that on 31.5.95 the 2nd respondent sent him a letter (marked "A") stopping his credit facility and asking him to make all payments in cash. He complied, but adds that in the morning of 26.6.95, some unknown persons had come to the premises with a letter saying they were from the 2nd respondent Corporation and had asked that the premises be vacated and handed over to them. The petitioner's son who was the Manager had said that as his father, the petitioner, had gone out of Colombo, he could not do so, and temporarily closed the petrol station. He thereafter made a complaint to the Dematagoda Police (marked "C").

However, the petitioner complains that on the same afternoon at about 3.00 O'clock, a group of thugs armed with crowbars arrived and forcibly took possession of the premises. Since the Dematagoda Police refused to record his statement saying they had orders from "higher authorities", the petitioner went to the Borella Police station with the same result. The petitioner says that he then contacted some high Police official and it was only thereafter, that his son was able to make a complaint (marked 'D') back at the Dematagoda Police station, at about 7.30 p.m. on the same day.

This complaint sets out that a group of unknown persons had arrived at the premises, broken open the padlocked office of the petrol station and were now preventing him from entering it, saying that the petrol station was taken over.

The petitioner states that he has been *informed orally* that the 2nd respondent had on 26.6.95 decided to terminate his dealership and

take possession of the premises. He adds that this decision has been politically motivated, inasmuch as the Chairman and all the Directors of the 2nd respondent Corporation are political appointees appointed by the 1st respondent after the present Government came into power. He says that he is a strong supporter of the opposing United National Party (letters marked F1, F2, F3 and G), and a close friend of the former President, the late R. Premadasa and his wife. He has filed several photographs (marked E1 to E4) showing his close association with them.

The petitioner further states that the 2nd respondent Corporation found fault with him for violating the terms and conditions of his agreement by issuing petrol in bulk contrary to regulations. The petitioner's reply is that he did this only in respect of the Department of the Government Printer, which Department required petrol in barrels for the use of its printing machinery and other equipment. He adds that after the Government Printer himself made representations to the 2nd respondent Corporation, the petitioner was given permission by the 2nd respondent to issue petrol to the Government Printer in barrels. (Letters marked H1, H2 and H3).

The petitioner complains that having terminated his dealership, and having forcibly taken over the petrol station on 26.6.95, the 2nd respondent handed it over on the same day, to the 3rd respondent, which he says is a Company which was incorporated only on 9.6.95 solely for the purpose of obtaining his dealership. He says that all eight Directors of the 3rd respondent company are supporters of the Government and that one of them was even appointed by the present Government as Chairman of the Gas Company on or about 1.10.94.

The petitioner also states that the 3rd respondent commenced operations on 29.6.95 with an opening ceremony which was attended by two Members of Parliament belonging to the People's Alliance.

The petitioner states that he has suffered the following consequential loss :

(i) a stock of approximately 500 gallons of diesel; and

(ii) a stock of approximately 300 gallons of kerosene oil left in the tanks when the premises was taken over by the 2nd respondent on 26.6.95; and

(iii) a sum of Rs. 259,978.53 which the petitioner had deposited with the 2nd respondent Corporation on the morning of 26.6.95 (the day of the take over), being payment for a consignment of petrol which was to be delivered to the petitioner by the 2nd respondent Corporation the same day. This consignment, was of course, not delivered to the petitioner.

The petitioner's allegation is that the 1st respondent caused the 2nd respondent Corporation to terminate his dealership and take over the premises for political reasons.

Leave to proceed with this application was granted in respect of the alleged infringement of Articles 12 (1) and 12 (2) of the Constitution.

The 1st respondent replied to the petitioner by his affidavit, stating that he was in no way involved in this matter and that he personally knows nothing of the incident complained of. This position of the 1st respondent was not challenged or contested in any way by learned president's counsel for the petitioner. In the circumstances, I have no reason to disbelieve the 1st respondent and I therefore accept what he says. I therefore hold that the 1st respondent is not guilty of any violation of the petitioner's fundamental rights.

The 3rd respondent company made answer through its Chairman and Managing Director, who filed his objections by way of an affidavit. He admits that he and some of the other Directors of the 3rd respondent company are, in fact, supporters of the People's Alliance, but that they had done nothing whatsoever to oust the petitioner from his dealership of the petrol station in question. He adds that the Regional Manager of the 2nd respondent Corporation handed over the petrol station to the 3rd respondent Company on 26.6.95 in response to an application made by it, not for the petitioner's petrol station, but for a petrol station. He admits that the 3rd respondent company was incorporated in June, 1995, but denies that it was incorporated only for the purpose of obtaining the petitioner's dealership. Paragraph 2 of the written submissions, filed on behalf of the 3rd respondent Company, says that it is correct that the 3rd respondent company has, amongst its primary objects, the distribution of fuel and lubricants, but adds that it is also a distributor of gas, and, in addition, has other lines of business. The Chairman of the

3rd respondent Company has filed an inventory of stocks handed over to him (marked 3R1) as follows :

2 Star petrol – 454 litres at Rs. 39.59	Rs. 17,973.86
Lanka kerosene – 908 litres at Rs. 9.28	Rs. 8,426.24
Lanka auto diesel – 4,781 litres at Rs. 12.20	Rs. 58,328.20
Total	Rs. 84,728.30

The answer on behalf of the 2nd respondent Corporation was made by Saliya Unamboowe, Manager, Marketing. He says in his affidavit that, he is "the Manager, Marketing, of the 2nd respondent Corporation on whose behalf I have been authorised to depose to in this affidavit". It should be noted that no affidavit has been filed either by the Chairman or by any of the Directors of the 2nd respondent Corporation. These matters become relevant later.

Saliya Unamboowe states in his affidavit that the petitioner was in fact appointed a dealer on 13.3.78 (letter of appointment marked 2R1); that the 2nd respondent entered into a dealership agreement with the petitioner dated 22.7.82 (2R2), and that on 14.9.82, the petitioner was granted written authority to "sell, supply and distribute" petroleum products (2R3). Continuing, he states that he "issued a formal letter dated 26.6.95, cancelling the written authority granted to the petitioner" (marked 2R9). This letter 2R9 stated that the Board of Directors of the 2nd respondent Corporation had by a special resolution decided to terminate the petitioner's dealership with immediate effect and directed the petitioner to hand over possession of the petrol station to the bearer of the said letter, forthwith.

The first thing that strikes me, is that in his letter 2R9, Mr. Unamboowe gives no reasons whatsoever for the termination of the petitioner's dealership. It is noteworthy also, that the petitioner was not warned that his dealership was about to be terminated by the 2nd respondent Corporation. The termination was to be with immediate effect and no notice whatsoever was given to the petitioner to quit and deliver possession. I must also mention that this letter of termination (2R9) was never served on the petitioner.

Most importantly, the letter 2R9 specifically mentions the fact that the Board of Directors of the 2nd respondent Corporation had passed a special resolution to terminate the petitioner's dealership. Mr. Unamboowe states in his affidavit that, a Board Paper was

submitted by him to the Board of Directors of the 2nd respondent recommending the termination of the dealership agreement with the petitioner. This Board Paper was not produced, and so, this court was not apprised of what the actual recommendation was and what reasons Mr. Unamboowe gave for such recommendation. I shall refer to this later. Mr. Unamboowe specifically states, in paragraph 17 of his affidavit that the Board of Directors took cognizance of the recommendation made by him and passed a resolution to terminate the dealership of the petitioner. This resolution too was not produced.

The position then is that neither the Board Paper said to have been submitted by Mr. Unamboowe to the Board of Directors of the 2nd respondent Corporation, and said to contain the recommendation of Mr. Unamboowe, nor the special resolution said to have been passed by the Board of Directors of the 2nd respondent Corporation, nor, at the lowest, any minute made by the Board of Directors in connection with its decision to terminate the petitioner's dealership has been produced before us. Nor has the Chairman or any of the members of the Board of Directors filed an affidavit in this case setting out the reasons which moved the Board to terminate the petitioner's dealership, and what the resolution, if any, was that they are said to have passed. Mr. Unamboowe is not a member of the Board of Directors of the 2nd respondent Corporation and therefore cannot give evidence as to why the Board in fact as it did. In the circumstances, this Court has been kept totally in the dark, and is therefore quite unaware as to what material, if any, was placed before the Board of Directors to enable it to arrive at a decision to terminate the petitioner's dealership, and what reasons the Board in fact had for deciding that the petitioner's dealership should be terminated. Although this Court repeatedly drew attention to this serious short-coming, learned President's counsel for the 2nd respondent was unable to furnish the requisite material to this Court. Thus, no one knows why the 2nd respondent passed its special resolution or what the transgression was, that led to and resulted in the extreme penalty of termination of the dealership of the petitioner.

I must here make mention of the fact that both Mr. Unamboowe (in his affidavit), and learned President's counsel for the 2nd respondent (in his submissions made before us), have referred to several transgressions alleged to have been committed by the petitioner, since the commencement of his dealership on 13.3.78.

Besides the fact that they have been explained and/or rectified and/ or settled by negotiation, it does not appear that any of them actually occasioned the ultimate penalty of termination, for, as I mentioned earlier, not a word is forthcoming from the Board of Directors of the 2nd respondent Corporation, as to what material, if any, was placed before it for its consideration and what reason it had for terminating the dealership. One is therefore not able to ascertain whether any single one of the alleged transgressions was even brought to the notice of the Board of Directors of the 2nd respondent Corporation. Mr. Unamboowe has very painstakingly listed in his affidavit, in great detail, a series of transgressions alleged to have been committed by the petitioner over the years, but has significantly failed to produce the Board Paper said to contain the recommendation he made to the Board of Directors of the 2nd respondent Corporation or the reasons he gave for making such recommendation. Nor has he mentioned, in his lengthy affidavit the material which he placed before the Board or the material, if any, the Board had before it. The only conclusion possible in the circumstances, is that the alleged transgressions of the petitioner enumerated by Mr. Unamboowe as being the reason for the termination of the petitioner's dealership, merely constitute material painstakingly collected and set out for the purpose of meeting the averments of the petitioner and for the purpose of defending this action. It is not possible to conclude, in the absence of any material to the contrary, that these alleged transgressions of the petitioner were ever brought to the notice of the Board of Directors of the 2nd respondent Corporation when it passed its special resolution, Mr. Unamboowe says it passed, terminating the petitioner's dealership. This material now presented before us cannot be said, on the evidence before us, to constitute the material which moved the Board of the 2nd respondent to act as it did, and is therefore not relevant. It is therefore not necessary for me to repeat here, the list of alleged transgressions said to have been committed by the petitioner since the commencement of his dealership. What Mr. Unamboowe seems to be attempting to do by setting out the series of alleged transgressions of the petitioner, is in fact to ask this Court to consider and, assess them and arrive at a decision as to whether the termination was justified or not. I do not think it is our function at all, to hold such an inquiry. What this Court wanted to know, and made repeated requests for, was the material upon which the Board acted when it passed its special resolution terminating the petitioner's dealership. No answer was forthcoming and no material at all was made available to this Court, and so, necessarily, the

question as to why this Court has been deprived of such material looms large in our deliberations, for, is it not reasonable to suppose that the Board of Directors did act on material placed before it, and if such material is not forthcoming, is it not reasonable to conclude that the Board of Directors of the 2nd respondent Corporation arbitrarily cancelled the petitioner's dealership, thus violating the fundamental rights?

In this connection, I must also reiterate that Mr. Unamboowe himself (despite filing a lengthy affidavit) has failed to produce the Board Paper containing his recommendation which he says he submitted to the Board. Nor has he given any explanation as to his inability to have done so. To my mind it would have been the easiest thing for him to have produced a copy of his own Board Paper, which presumably would have contained his recommendation and all the material in support. His not doing so leads to serious doubts as to whether such Board Paper in fact exists.

The further questions that arise are, if such a Board Paper does exist, was it in fact submitted to the Board of Directors by Mr. Unamboowe? Did the Board in fact act on it, or is it possible that the Board may have acted on some other criteria or on no criteria at all? It is quite clear that from the material available from the affidavit of Mr. Unamboowe, that no presumption can be drawn that he in fact submitted his Board Paper (mentioned therein) to the Board of Directors; neither can any presumption be drawn that the Board of Directors actually acted upon it, for as I just said before, the Board could have acted on some other criteria or on none at all.

Further, if the Board Paper mentioned in Mr. Unamboowe's affidavit, which must necessarily incorporate its supportive material, was in fact submitted to the Board and was in its possession, the presumption that may be drawn in terms off illustration; to section 114 of the Evidence Ordinance (where material said to be in the possession of the Board is not produced by the Board) would, in the circumstances of this case, be adverse to the 2nd respondent. Illustration (*f*) to section 114 of the Evidence Ordinance states :

> "The Court may presume that evidence which could be and is not produced would if produced, be unfavourable to the person who withholds it."

Thus, it appears that if the Board did have in its possession any Board minutes, and/or the Board Paper, and/or the special resolution of the Board relating to the termination of the petitioner's dealership and did not produce any of the said documents, it would be legitimate to draw the presumption that any such material, if produced, would be unfavourable to the 2nd respondent Corporation.

On the other hand, if there is, in fact, no such material in the possession of the Board, it would substantiate the position of the petitioner, that the termination of his dealership was entirely arbitrary, and thus violative of the petitioner's fundamental rights.

At this point I must consider the other half of this incident, which is the handing over of the petitioner's dealership to the 3rd respondent, immediately upon the petrol station in question being taken over by the 2nd respondent. Mr. Unamboowe has annexed to his affidavit, a copy of the report (marked 2R11) made by the Area Manager who was sent to take over the petitioner's petrol station. In 2R11, the Area Manager says, *inter alia,* that he went to the premises with 3 other officers; that he "would like to stress the fact that we went unarmed, without carrying any implements such as crowbars, iron rods, etc.; that the dealer was not present, but four of his sons were; that the latter were "very co-operative and cordial" but "refused to take over the letter (of termination, 2R9) in the absence of the dealer"; that the sons locked up the buildings on the premises and left; that having made an entry at the Dematagoda Police Station, he returned to the petitioner's petrol station with a posse' of policemen including a Sub-Inspector of Police who "supervised the opening of the sales room, compressor room and the other room by a locksmith", and that, "then the outlet was handed over to 'Slipto Agencies (Pvt) Ltd." (i.e. the 3rd respondent).

A preliminary matter which aroused my curiosity was, why the Area Manager should "stress in fact that we went unarmed without carrying any implements such as crowbars, iron rods, etc." ! This apart, the first important matter to be noted is that the letter of termination (2R9) was never served on the petitioner who was in fact the dealer whose dealership was to be terminated. It seems quite natural that the dealer's sons refused to accept 2R9. It also does not appear that this letter of termination 2R9 was served on the petitioner even subsequently. The petitioner himself states in paragraph 24 of his

petition that he "has now been ***orally informed*** that the 2nd respondent had decided on or about 26th June, 1995, to terminate the petitioner as a dealer and to take possession of the premises". Therefore the situation appears to be that the petitioner's dealership was terminated and his petrol station taken over by the officers of the 2nd respondent without his ever being served with any letter of termination, and further, that having done so, the officers of the 2nd respondent immediately handed over the petrol station to the 3rd respondent.

The next question of no less importance is, on what authority was the petrol station handed over to the 3rd respondent? Mr. Unamboowe makes answer on behalf of the 2nd respondent and says that in order not to deprive the public of petrol and petroleum products, it was imperative, upon termination of the petitioner's dealership, for the 2nd respondent to resume operation of the petrol station; that the 3rd respondent "had been desirous of obtaining a dealership, and had satisfied the 2nd respondent of its wherewithal and capacity to conduct the operation successfully," and that, "the awarding of the dealership to the 3rd respondent was not motivated by political considerations". The important consideration here is that once again, this Court is faced with the situation where the 2nd respondent has not produced any material at all to substantiate or support its actions. The 2nd respondent has failed to produce any material showing how it satisfied itself of the "wherewithal and capacity" of the 3rd respondent to run the petrol station successfully. More importantly, the 2nd respondent has failed to produce the Board minutes and/or the Board Paper and/or the resolution of the Board of Directors regarding its decision to award the dealership to the 3rd respondent. In this connection, it must not be forgotten that the petitioner avers (and this is not denied by Mr. Unamboowe) that the 3rd respondent was incorporated only on 9.6.95 and the dealership was handed over to the 3rd respondent on 26.6.95. It is, in fact, not known how the 3rd respondent arrived on the scene. Neither learned President's Counsel for the 2nd respondent nor learned Counsel for the 3rd respondent was able to assist Court on this matter with any substantial material.

The Chairman and Managing Director of the 3rd respondent company has filed an affidavit in which, *inter alia,* he says, that it is correct that the 3rd respondent company was incorporated in June, 1995, but not for the sole purpose of obtaining the dealership in question; that the dealership was handed over to the 3rd respondent on 26.6.95

"in response to an application made by the company not for this particular petrol station, but for a petrol filling station; that he and some of the other Directors of the 3rd respondent are, in fact, supporters of the People's Alliance, but that the 3rd respondent did nothing whatsoever to oust the petitioner from his dealership. He has filed (marked 3R1) a copy of an entry he made at the Dematagoda Police Station together with handwritten copies of the inventory of goods and products taken over by him, but significantly, has failed to file a copy of the application which he says he made to the 2nd respondent for the grant of a dealership to him. This he could well have done at least to show his *bona fides*. Then again, he might have told this Court as to what documents he produced to show his worth and whether he was even interviewed by the Board or anyone on its behalf before he was found suitable.

Thus, where the 3rd respondent is concerned, this Court does not have the benefit of either the application said to have been made to the 2nd respondent by the 3rd respondent for a dealership, or any minute or Board Paper or resolution of the Board of Directors of the 2nd respondent containing or referring to any decision regarding the capability and suitability of the 3rd respondent to handle a dealership and containing any decision to award the dealership in question to the 3rd respondent. The presumption to be drawn in terms of Illustration (*f*) to section 114 of the Evidence Ordinance must necessarily be drawn in this instance too.

The basis of the relationship between the petitioner and the 2nd respondent is the agreement (marked 2R2) entered into on 22.7.82. The relationship between them is thus contractual. Nevertheless, the action taken by the Board of the 2nd respondent Corporation (to terminate the petitioner's dealership and to appoint the 3rd respondent in his place) constitutes "executive or administrative action" within the meaning of Article 126 of the Constitution, and is not contractual in character. This is now well settled – vide *Dahanayake v. de Silva*[1] per Samarakoon, C.J., where His Lordship said : "I hold that the termination of the petitioner's dealership by the 2nd respondent was 'executive or administration action' although it involved a contract, and was in violation of Article 12 (1)." This was followed in *Kuruppuge Don Sompala Gunaratne et al v. Ceylon Petroleum Corporation et al*[2] and in *Wickrematunga v. Ceylon Petroleum Corporation et al*[3]. In this connection we must not be unmindful of the fact that the 2nd respondent Corporation enjoys the exclusive monopoly of carrying on

the business, *inter alia,* of supplier and distributor of petrol, diesel and petroleum products as agent of the State.

Clause 12B of the said agreement (2R2) enumerates three ways in which a dealership can be terminated. The first is where the General Manager of the Corporation is of opinion that the petitioner has defaulted in the ways set down. The second is after giving three months' notice either way. The third method is the one adopted by the 2nd respondent, and this method states that, "the Board of Directors may by a resolution passed at a meeting of the Board of Directors terminate the agreement without notice and without assigning any reason whatsoever".

Firstly, in terms of the agreement (2R2) it was the Board of Directors that was vested with the power to arrive at a decision to terminate the agreement with the petitioner, and this was to be done by a resolution passed at a meeting of the Board of Directors. As set out earlier, no resolution by the Board was produced before us and so, it is not possible for this Court to speculate whether any resolution was ever passed by the Board in respect of this petitioner, or whether, if passed, the contents of such resolution would if produced, have turned out to be unfavourable to the Board. if it is the former, then the 2nd respondent is in breach of clause 12B of the agreement and is guilty of a wholly arbitrary act. If the latter, then this Court is entitled to draw a presumption adverse to the 2nd respondent in terms of illustration (*f*) to section 114 of the Evidence Ordinance. According to the affidavit of Mr. Unamboowe there was a resolution, which for some undisclosed reason, we have not been shown. The question that arises is, why was this method of summary termination of the petitioner's agreement resorted to in such haste? Did this amount to the arbitrary use of a power vested in the State?

As Fernando. J, stated in *Kuruppuge Gunaratne's case* (supra), "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."

On a consideration of the entirety of the evidence placed before us, it is clear, as set out above, that there is no material whatsoever to indicate why the Board had decided to terminate the petitioner's agreement and appoint the 3rd respondent in his place. In these circumstances no conclusion is possible other than the action of the Board of the 2nd respondent is violative of the petitioner's fundamental rights under Article 12 (1) which prohibits arbitrary, capricious and/or discriminatory action.

The petitioner's complaint is that the sudden termination of his dealership without warning or notice and without reasons being given, was on account of discrimination on the grounds of political opinion. Thus he alleges that he was treated the way he was, on account of political opinion, because, firstly, the Chairman and all the Directors of the 2nd respondent Corporation are appointed by the 1st respondent, the Minister of Irrigation, Power and Energy, (which fact only is admitted by Mr. Unamboowe in his affidavit) and secondly, the Chairman and all the Directors are all political appointees who are politically aligned to the present Government of the People's Alliance. The petitioner also alleges that the Chairman and some of the Directors of the 3rd respondent company to whom the petitioner's petrol station was handed over are themselves supporters of the People's Alliance.

This is in fact admitted by the Chairman of the 3rd respondent company in his affidavit. In addition the petitioner says that one of the Directors of the 3rd respondent Company was appointed Chairman of the Gas Company by the present Government on or around 1.10.94.

On the other hand, the petitioner says that he is a strong and long serving supporter of the opposition United National Party (letters marked F1, F2, F3 and G) and that he has been a close friend of the former President, the late R. Premadasa. The petitioner adds that one of his children was a flower girl at the wedding of the late R. Premadasa. He has produced several photographs marked E1 to E4 in which he is shown in close association with the late President. Further, the petitioner states in paragraph 35 of his petition, that the widow of the late President, Mrs. Hema Premadasa, had been employed by the petitioner prior to her marriage. He therefore states that his dealership was terminated solely on political grounds.

If I may repeat myself, it is seen that there is no Board Paper or resolution by the Board to counter this allegation, and I am of the view that these facts taken in their entirety would lead to the conclusion that the Board of the 2nd respondent Corporation was motivated by political considerations when it terminated the petitioner's dealership. The arbitrariness with which the Board acted also lends credence to this view.

Taking into consideration all the circumstances of this case, I am of the view that it has been established that the agreement with the petitioner was terminated by the Board of the 2nd respondent Corporation on account of political opinion and therefore, I hold that the 2nd respondent has violated the petitioner's fundamental right guaranteed by Article 12 (2) of the Constitution.

As regards the violation of Article 12 (1) of the Constitution, I must stress once again, that the Board of the 2nd respondent Corporation has placed no material whatsoever before us to justify termination. As set out in detail earlier in this judgment, the several transgressions set out in detail by Mr. Unamboowe, in his affidavit, were actually meant for the purposes of the 2nd respondent's defence in this court and there is nothing whatever to suggest that this material was ever presented before the Board. I am therefore of the view that the Board could not have taken into consideration the litany of transgressions said to have been committed by the petitioner, as enumerated by Mr. Unamboowe.

In the result, this Court is totally unaware of the Board's reasons for the termination, and I can therefore discover no basis at all for the termination of the petitioner's dealership other than political considerations. The 2nd respondent has totally failed to establish that its decision to terminate was in conformity with the terms of the Agreement (2R2). On the contrary, it was in total violation of clause 12B of the agreement. Therefore, the allegation made by the petitioner that the 2nd respondent had not only acted in a wholly arbitrary manner, but also that it had discriminated against him on account of political opinion has not been countered by the 2nd respondent.

I would therefore hold that the Board of the 2nd respondent Corporation was not entitled to terminate and not justified in terminating the petitioner's dealership, and therefore the petitioner is entitled to

a declaration that his fundamental right under Article 12 (1) has been infringed by the abritrary termination of his dealership.

I therefore grant the petitioner a declaration that his fundamental rights under Article 12 (1) as well as under Article 12 (2) have been violated by the 2nd respondent.

In his prayer the petitioner prays for damages and/or compensation in a sum of Rs. 25 million. He also claims a large sum of money as commission which he lost as a result of the termination. He adds that he ran no other business, and had no income other than what he earned from the petrol station. As set out earlier in my judgment, the petitioner says that when he vacated the petrol station, he left behind a stock of approximately 500 gallons of diesel and 300 gallons of kerosene oil. In addition, on the very morning of the take over, he had deposited Rs. 259,978.53 with the 2nd respondent Corporation for a consignment of petrol, which payment is admitted.

On the other hand according to the written submissions on behalf of the 2nd respondent, the stocks left behind were, 454 litres of petrol, 4,781 litres of diesel and 908 litres of kerosene all of which were valued at Rs. 84,728.00 and this together with the abovementioned deposit, totals to Rs. 344,706.53. However, the 2nd respondent says that the petitioner owes the 2nd respondent Rs. 360,702.27 in respect of purchases made, and outstanding electricity and water bills, and that therefore, a balance is still due to the 2nd respondent from the petitioner.

I am of the view that these are accounting matters which must be checked by persons competent to do so and the account settled accordingly. It is not the function of this Court to audit accounts, so to speak.

In conclusion, for the reasons set out in this judgment, I declare:

(i) that the 1st respondent has not violated any of the petitioner's fundamental rights ;

(ii) that the 2nd respondent has violated the fundamental rights guaranteed to the petitioner under Articles 12 (1) and 12 (2) of the Constitution; and

(iii) that the Order dated 26.6.95 terminating the petitioner's dealership of the petrol station situated at No. 291, Danister de Silva Mawatha, Colombo 9, and contained in the letter marked 2R9 is null and void and of no effect in law.

I make order and direct the 2nd respondent Corporaton to reinstate and take all such steps as are necessary to reinstate the petitioner as dealer of the petrol station situated at No. 291, Dr. Danister de Silva Mawatha, Colombo 9, under and in terms of the agreement between the 2nd respondent Corporation and the petitioner dated 22.7.82 and marked 2R2 in these proceedings, within one month of the date of this order. The implementation and carrying out of this order, would necessarily mean that the 3rd respondent will have to be displaced.

Taking into consideration all the facts and circumstances of this case, I would consider it just and equitable that the 2nd respondent Corporation should pay to the petitioner a sum of Rs. 100,000 as compensation together with Rs. 25,000 as costs.

I make order accordingly.

DHEERARATNE, J. – I agree.

GUNAWARDANA, J. – I agree.

Relief granted.