MRS. W. M. K. DE SILVA
v.
CHAIRMAN, CEYLON FERTILIZER CORPORATION

SUPREME COURT
JAMEEL, J.
FERNANDO, J.
AMERASINGHE, J.
S.C. APPLICATION No.7/88
NOVEMBER 9,11,22 AND 24, 1988 & DECEMBER 12, 1988

Fundamental Rights – Cruel, inhuman or degrading treatment or punishment – Mental torture – Freedom to engage in any lawful occupation of one's choice – Articles 11 and 14(1)(g) of the Constitution.

The first respondent was the Chairman of the Fertilizer Corporation and the petitioner was the Secretary. The Fertilizer Corporation had contracted with a foreign supplier for the supply of urea in three deliveries. In September 1985 the supplier requested that he be permitted to do the supply in two deliveries. The Purchase Review Committee of the Corporation recommended the request subject to a reduction of one dollar per metric ton. Later a rebate of 50 US cents per metric ton was accepted on a purported decision of the Board of 29.11.1985 of which the petitioner had no record in the minutes. The petitioner's position was that no such decision had been made. However at the meeting of 29.4.86 the 1st respondent wanted the 'omission' rectified. The petitioner agreed to make an amending minute but refused to authenticate it with her signature. From here began the eventual souring of relations between the petitioner and the first respondent. The petitioner made a statement to the C.I.D. Unit of the Presidential Commission about this and put the first respondent under investigation. Subsequently the petitioner was sent on compulsory leave. Later she was recalled with

effect from 01.01.1988 but she was not allowed the use of her old cubicle or allocated any work. The treatment meted out to her gradually deteriorated. She was made to sit in the verandah at a broken table on a broken chair and even totally locked out and life in the office was made humiliating for her and conditions became intolerable. In respect of the treatment meted out to her between 01.01.1988 to 19.01.1988 she complained to the Supreme Court that she had been subjected to cruel, inhuman or degrading treatment or punishment in violation of her fundamental rights under Article 11 and that she had been denied continuity of employment and the freedom to be engaged in a lawful occupation of her choice in violation of her fundamental rights under Article 14(1)(g).

Held:

1. While the treatment meted out to the petitioner would undoubtedly amount to a grossly unfair labour practice, it does not constitute torture or cruel, inhuman or degrading treatment or punishment.

Per Amerasinghe, J. "In my view Article 11 of the Constitution prohibits any act by which severe pain or suffering, whether physical or mental, is, without lawful sanction in accordance with a procedure established by law, intentionally inflicted on a person (whom I shall refer to as the 'victim') by a public official acting in the discharge of his executive or administrative duties or under colour of office, for such purposes as obtaining from the victim or a third person a confession or information, such information being actually or supposedly required for official purposes, imposing a penalty upon the victim for an offence or breach of a rule he or a third person has committed or is suspected of having committed, or intimidating or coercing the victim or a third person to do or refrain from doing something which the official concerned believes the victim or the third person ought to do or refrain from doing, as the case may be."

"Article 11 is a species belonging to a certain genera. It belongs to that class which protects life and personal freedom. It belongs to the same family as the fundamental rights of freedom from arbitrary arrest, detention and punishment and retroactive penal legislation."

"Article 11 is not concerned with the conduct of public officials in relation to such matters as one's contractual rights in a place of work."

2. Article 14(1)(g) ensures the freedom to engage in any lawful occupation of one's choice, but this provision does not extend to a right to be employed by a particular master or in a particular place of work.

Article 14 confers the right to certain freedoms upon citizens of Sri Lanka. There is no doubt that the petitioner is a Sri Lankan. However, in an application for relief under Article 14(1)(g), the Petitioner must also show that her right to engage in any lawful occupation, profession, trade, business or enterprise was unreasonably obstructed. The Petitioner must go further still and establish that the right claimed was (a) a legal right and that (b) it is a fundamental right.

Per Amerasinghe, J: "That Article (Article 14(1)(g), recognizes the right of every citizen to use his powers of body and mind in any lawful calling: to pursue any livelihood and avocation. It confers no obligation to give any particular kind of work or indeed any right to be continued in employment at all."

Cases referred to:

1. *Elmore Perera* v *Major Montague Jayawickrema* [1985] 1 Sri LR 285, 300, 301, 323
2. *Wijeratne* v *People's Bank* [1984] 1 Sri LR 1
3. *Roberts and another* v *Ratnayake and others* [1986] 2 Sri LR 36, 45
4. *Thadchanamoorthi* v *Attorney-General and others* (1980) 1 FRD 129, 140
5. *Velmurugu* v *Attorney-General and another* (1981) 1 FRD 180, 215, 241
6. *Jeganathan* v *The Attorney-General* (1982) 2 FRD 257
7. *Mariadas Raj* v *The Attorney-General* (1983) 2 FRD 397
8. *Vivienne Goonewardene* v *Perera* (1983) 2 FRD 426
9. *Kapugeekiyana* v *Hettiarachchi and two others* [1984] 2 Sri LR 153
10. *Amal Sudath Silva* v *Kodituwakku* [1987] 2 Sri LR 119
11. *Saman* v *Leeladasa et al* – S.C. Application 4/88 – S.C. Minutes of 12.12.1988.
12. *Revis* v *Smith* (1856) 18 CB 126, 141
13. *Marrinan* v *Vibart* [1963] 1 QB 234, 239
14. *Eshugbayi* v *Government of Nigeria* AIR 1931 PC 248, 252
15. *The State of Jammu and Kashmir* v *Ghulam Rasool* AIR 1961 SC 1301
16. *Wijesinghe* v *Attorney-General* (1984) 2 FRD 40
17. *Wijetunge* v *Aluwatuvala and others* – S.C. Application 89/84 – S.C. Minutes of 30.10.84
18. *Collier* v *Sunday Referee Publishing Co Ltd* [1940] 2 KB 647
19. *Marbe* v *George Edward, Daily Theatre Ltd* [1928] 1 KB 269
20. *Herbert Clayton & Jack Waller Ltd* v *Oliver* [1930] AC 209
21. *Hall* v *British Essence Co Ltd* (1946) 62 TLR 542
22. *Titmus & Titmus* v *Rose & Watts* [1940] 1 All ER 599
23. *Dunk* v *George Watter & Sons Ltd.* [1970] 2 All ER 630 CA
24. *Langston* v *Amalgamated Union of Engineering Workers* [1947] 1 All ER 980
25. *Breach* v *Epsylon Industries Ltd* [1976] 1 CR 316
26. *Turner* v *Lawdon* [1901] K B 153
27. *Bosworth* v *Angus Jowett & Co. Ltd.* [1977] 1 RLR 374 EAT
28. *R.P. Jayasena and others* v *K. R. S. Soysa and another* (1980) 1 FRD 97, 102

APPLICATION against infringement of fundamental rights

M. A. Mansoor with *K. S. Tillekeratne* for petitioner.

K. N. Choksy, PC with *Rohitha Bogollagama* and *Nihal Fernando* for 1st and 2nd respondents.

Shibly Aziz, PC, Additional Solicitor-General 3rd respondent

Cur. adv. vult.

March 31, 1989.

JAMEEL, J.

The Petitioner joined the Ceylon Fertilizer Corporation (the 2nd Respondent) in 1969, as a clerk. In April 1981, when Noel Fernando, the Secretary to the Board, went on overseas leave, the Petitioner was appointed Secretary to the Board and Personal Assistant to the Chairman. The Secretary to the relevant Ministry and the Attorney-General have been made parties to this application for the purpose of giving them notice.

The Petitioner's grievance relates to the treatment meted out to her in consequence of statements made by her in February 1987 to the C.I.D. Unit of the Special Presidential Commission of Inquiry concerning a rebate obtained by the Corporation in late 1985 in respect of a contract for the supply of 35,000 m.t. of urea by Petrochemical Industries Ltd of Kuwait ("the supplier").

In January 1985, soon after the 1st Respondent assumed office as Chairman, the Petitioner informed him of her grievance relating to a decision of the former Chairman that she had to account to another officer in respect of payments for telex bills. The 1st Respondent took prompt action to redress this grievance. In October 1986, the Board acceded to her request that her post be upgraded, as "she shoulders high responsibility". I mention these two matters as they indicate that, upto October 1986, the Chairman and the Board had no reservations about the Petitioner's work, and did not have any animus against her.

In September 1985, the supplier requested that it be permitted to advance the deliveries under the contract, and in two shipments instead of three as stipulated. The Purchase Review Committee of the Corporation considered, and favourably recommended this request, subject to a price reduction of US $ 1 per m.t. It appears that this figure was intended to cover the estimated additional costs

of warehousing and storage. The Board approved, the Ministry was informed, and a letter was written to the supplier on this basis. Advance delivery was made, but there was no reply to that letter, until the local agents of the supplier wrote on 21.11.85. That letter "confirmed" the discussion between the principal and Corporation officials, including the 1st Respondent, and while acknowledging that it was the supplier's problems that rendered it necessary to advance the deliveries, asserted that the arrangement was even more beneficial to the Corporation; and suggested a price reduction of US $ 10000.

That letter bears the date stamp of the Purchasing Division of the Corporation, indicating that it was received in that Division on 3.12.85; Counsel for the Petitioner has expressly stated that this is not challenged. It bears an endorsement, dated 2.12.85, admittedly made by the 1st Respondent to the Purchasing Manager, "Board approved 50% recovery. Pl. get this expedited". It is thus clear that the 1st Respondent had received this letter not later than 3.12.85. There is nothing to indicate how and when the supplier agreed to advance his offer from US $ 10,000 to US $ 17,500, and there must have been some communication between the parties of which we are unaware. In fact, the refund ultimately received by the Corporation was the rupee equivalent of US $ 17,500 (or US $ 0.50 per m.t.). The existence of this letter came to the knowledge of the Petitioner, she says, only in or about April 1986 when the Auditors queried the quantum of the price reduction, for which they could find no Board authority. Having made a search, she failed to find any Board decision, whereupon the Auditors had given her the date 29.11.85 and informed her of the existence of this letter in the Purchasing Division. The Board meeting immediately prior to 2.12.85 was that held on 29.11.85, and neither the agenda nor the minutes of that meeting made any reference to this letter or that subject-matter; nor has any reference been made thereto when the minutes of that meeting were confirmed at the subsequent meeting. She says that the 1st Respondent then dictated a statement for submission by her at the Board meeting of 29.4.86, which she refused to sign; that document was typed, but not signed, by her, and was treated as a Board paper; this was discussed, and the Board recorded that by inadvertence the decision in regard to this letter had not been minuted, and proceeded to make a full record of that decision. This constitutes the *casus belli* in this case: was that decision in fact taken

on 29.11.85, and an inadvertent omission in the minutes rectified on 29.4.86, *or* was such a decision not taken, and were the proceedings of 29.4.86 no more than a cover-up, with the Petitioner as the unfortunate scapegoat?

However, the relationship between the Petitioner and the 1st Respondent apparently continued to be cordial until about October 1986 when her post was upgraded. Learned President's Counsel for the 1st and 2nd Respondents relied heavily on this circumstance as justifying the inference that what occurred on 29.4.86 was merely the rectification of an omission. However, this is not conclusive, for it is equally possible that the Petitioner was an unwilling participant – or perhaps, spectator – insofar as the events of 29.4.86 were concerned, having only discharged the stenographic function of recording the minute without involving herself in an admission as to its truth; and through concern for her livelihood, refrained from stirring up controversy. On that view, upgrading her post could be the reward for acquiescence.

A Commission had been appointed, by the Minister in charge of the Corporation, to inquire into various irregularities alleged against the 1st Respondent, and in October 1986 the Petitioner testified *inter alia* about this price reduction. She also made a statement to the C.I.D. Unit of the Special Presidential Commission of Inquiry on 18.2.87. At a Board meeting held on 19.2.87, the Petitioner's omission (in April 1986) to sign the statement acknowledging her responsibility for the "incorrect" minute was again referred to, and upon her continued refusal to take responsibility, she was asked to leave the Board room, and recalled about two hours later to take down the minutes. At the next Board meeting held on 25.2.87, the Board took the view that she had become a tool in the hands of persons conspiring to make allegations against the 1st Respondent and the Board, and decided that they lacked confidence in her, and placed her on compulsory leave pending inquiry. Thereafter, charges were levelled against the 1st Respondent by the Special Presidential Commision; these were not inquired into, as the proceedings of that Commission terminated in December that year. (However, the Shipping Manager of the Corporation had been dealt with, by this Court, for contempt of that Commission, by reason of his having attempted to dissuade the Petitioner from giving evidence before that Commission.)

On 23.12.87, the Board of the Corporation resolved to recall her to work on 1.1.88, and to take disciplinary action in respect of the matters which led to her being placed on compulsory leave. A letter recalling her was served on her at 8 p.m. on 31.12.87. However, upon her reporting for work on 1.1.88, she found that she was not assigned the work previously carried out by her. Further, even her former cubicle was not available, and she was requested to occupy another; on the next few working days, even that cubicle was not available, and she had to sit on a Visitor's chair in a verandah outside the Secretarial Unit. On 8.1.88, she was directed to use a broken chair and a broken desk just outside the 1st Respondent's office. On the next day, the 1st Respondent's office was locked, and she could not even reach her broken chair and table. Throughout this period she was not assigned any work. Although in the 1st Respondent's affidavit it is claimed that the Board decided "also to relieve her of her duties as Secretary to the Board of Directors", and that the Corporation "has accordingly assigned her the duties of Assistant Administratioon Manager", there is nothing to that effect either in the relevant Board minute or in the letter recalling her to work.

The 1st Respondent's conduct in relation to the price reduction and the letter of 21.11.85 would properly have been a matter for inquiry by the aforesaid Commission. However, extensive oral and written submissions have been made on that topic, as the 1st Respondent's conduct towards the Petitioner is alleged to have been influenced thereby. There appear to be two possibilities:

1. That letter was in fact tabled at the Board meeting, and a decision was taken:

2. That letter was not tabled, a price reduction not discussed, and the smaller price reduction was only duly approved in April 1986; the 1st Respondent, decided upon the smaller price reduction prior to 3.12.85, without formal Board approval;

If the letter was formally tabled at the Board meeting, it should have been handed to the Petitioner for the purpose of her secretarial duties; instead, it appears to have been retained by the 1st

Respondent over the intervening weekend, and sent to the Purchasing Manager on Monday (2.12.85). The Petitioner's version that this letter did not then come to her notice thus seems more plausible, despite the affidavits of other Directors that the 1st Respondent "submitted" this letter. It may well be that the 1st Respondent made a passing reference to the contents of the letter, and without discussion obtained approval for the smaller price reduction. On the material available to us, it does not seem probable that the letter was tabled and that a full discussion took place. While no finding on that matter is necessary, it is important to stress that the omission in the minutes is not the lapse of the Petitioner: since admittedly the letter was not handed to her at any stage. The subsequent events have thus to be viewed on the basis that there was a lapse or irregularity on the part of the 1st Respondent, and not the Petitioner; and that there appear to have been some matters fit for inquiry by the aforesaid Commission.

In that background, thereafter the Petitioner refused to accept responsibility for the omission; this was not fatal, because the Board minute of 29.4.86 was sufficient for the audit query. Her subsequent conduct between October and February 1987 would inevitably have caused alarm to the 1st Respondent; her insistence that there had been no Board decision on 29.11.85 could have had serious consequences.

While a host of minor irritants have been dealt with by learned Counsel for the Petitioner, the real issue in this case is whether the treatment meted out to her between 1.1.88 and 19.1.88 (when this petition was filed) constitutes a violation of her fundamental rights. All the other matters relate to quite different periods, and are relevant only to support Counsel's submission that the 1st Respondent entertained a personal animus against the Petitioner; arising from the 1st Respondent's lapse, or irregular conduct, in regard to the price reduction, and the Petitioner's refusal to accept responsibility therefor.

It is clear that the Petitioner has been degraded and humiliated, by being made to mope in front of her colleagues and subordinates, isolated on a verandah, and at times locked out, even without her broken chair. She would naturally view this as the culmination of a course of conduct commencing in February 1987, after her statement to the C.I.D. While this treatment would undoubtedly amount to a

grossly unfair labour practice, it does not constitute "torture, or cruel, inhuman or degrading treatment or punishment"; the acts complained of are clearly not 'torture" or "punishment"; they fall far short of the degree of mental or physical coercisiveness or viciousness required to constitute "cruel, inhuman or degrading treatment". This Court when considering the Essential Public Services Bill (Decisions of the Supreme Court on Parliamentary Bills, 1978-1983, page 65) rejected the contention that Article 11 is confined to "some wrongful and wicked application of physical force"; a mandatory forfeiture of all property and removal from the register of any profession, regardless of the nature of the offence and the degree of blameworthiness, was held to be a cruel and inhuman punishment and thus unconstitutional, but permissible if left to the discretion of a Court. Thus ill-treatment *per se,* whether physical or mental, is not enough; a very high degree of mal-treatment is required.

It was further contended that, insofar as it was linked to her occupation, this treatment was in violation of her fundamental right under Article 14(1)(g); that she had a right to continuity of employment, and that the 1st Respondent was attempting to coerce her to leave the Corporation. Article 14(1)(g) ensures the freedom to engage in any lawful occupation of one's choice, but this provision does not extend to a right to be employed by a particular master or in a particular place of work. In *Elmore Perera's* case(1) Sharvananda, C.J., expressed the opinion (*semble*) –

> "Article 14(1)(g) recognises a general right in every citizen to do work of a particular kind and of his choice. It does not confer the right to hold a particular job or to occupy a particular post of one's choice. The compulsory retirement complained of, may, at the highest affect his particular employment, but it does not affect his right to work as a Surveyor."

Hence there is no infringement of the fundamental right under Article 14(1)(g).

Learned President's Counsel has submitted that the Corporation is a trading Corporation which imports, mixes and sells fertilizer, in competition with several other public and private organisations; and that the acts of the Corporation do not constitute executive or administrative action. In *Wijeratne v People's Bank* (2), a security officer was placed in a lower grade, after a re-organisation; he was

employed in connection with the commercial activities of the Bank, and not in connection with any State activity. It was held that the application was not maintainable as there was no infringement by "executive or administrative action". Here, too, the Petitioner has failed to establish that the conduct complained of falls within that description.

All the grievances of the Petitioner, including non-payment of increments and other dues, if established, would constitute violations of her contract of employment; as was observed in *Roberts' case* (3)

> "where the rights and obligations of the parties to such contract fall to be determined by the ordinary law of contract, then the provisions of Article 12(1) of the Constitution have no application, and cannot be invoked."

I would accordingly dismiss this application, but having regard to all the circumstances, without costs.

FERNANDO, J. – I agree with the judgments of my brothers Jameel, J., and Amerasinghe, J.

AMERASINGHE, J.

The delay in arriving at a decision in this case was due to the unfortunate fact that learned Counsel for the Petitioner, troubled as he was by illness, was constrained to request a postponement of the oral hearing from 24 November to 12 December. Although he undertook to complete his submissions in writing by 26 December 1988, he was able to do so only on 22 February 1989. Thereafter Counsel for the Respondents placed his further written submissions before us on 2 March 1989.

I have had the advantage of reading the judgment of my brother Jameel, J. and I entirely agree with his comprehensive statement of the facts. I am also in agreement with his conclusion that the Petitioner's application should be dismissed on account of her failure to establish that her fundamental rights under Articles 11,12 and 14 have been violated, but that, in the special circumstances of this case, this Application should be dismissed without costs.

Article 11 of the Constitution guarantees freedom from torture, cruel, inhuman or degrading treatment or punishment. The words of

the Constitution are in terms indentical to those in Article 5 of the Universal Declaration of Human Rights which was adopted by the General Assembly of the United Nations on 10 December 1948. Article 5(2) of the American Convention on Human Rights and Peoples' Rights, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 7 of the International Convention on Civil and Political Rights (Cf. also Article XXV of the American Declaration of the Rights and Duties of Man) are also in similar terms.

There are several decisions of this Court arising out of applications for relief based upon the violation or alleged violation of the fundamental right to be free from torture, or cruel, inhuman or degrading treatment or punishment. (E.g. see *Thadchanamoorthi v. Attorney-General and Others* (4); *Velmurugu v. Attorney-General and another* (5); *Jeganathan v. The Attorney-General* (6); *Mariadas Raj v. The Attorney-General* (7); *Vivienne Goonewardene v. Perera* (8); *Kapugeekiyana v. Hettiarachchi and two others* (9); *Amal Sudath Silva v. Kodituwakku* (10) and *A.S.Saman v. Leeladasa et al.*(11).

The acts in question in those cases were all done by law enforcement officers of the State including members of the defence services who, in the special circumstances of the times, were engaged in law enforcement in addition to the task of the defence of the Republic. They were all cases in which physical violence formed the basis of the complaint. In the application before us, however, the alleged cruel, inhuman or degrading treatment or punishment complained of is psychical in nature. It is, therefore, a novel claim for relief and it may raise a presumption against its validity. We may remark that the world has gone on very well without applications such as this and we doubt whether it would continue to do so if such things were allowed. (Cf. per Creswell, J. in *Revis v. Smith* (12), followed with approval in *Marrinan v. Vibart* (13). Yet, this Court undoubtedly has power to recognize a novel claim if justice so requires. We shall not shrink from doing our duty to advance fundamental rights as we are required to do by Article 4(d) of the Constitution. (Cf. *Eshugbayi vs. Government of Nigeria* (14).

I am of the opinion that the torture or cruel, inhuman or degrading treatment or punishment contemplated in Article 11 of our

Constitution is not confined to the realm of physical violence. It would embrace the sphere of the soul or mind as well. Lord Denning in *Freedom Under the Law*. The Hamlyn Lectures, 1949 at p. 26, after stating that torture is "usually for the sake of getting people to confess their guilt or to implicate others", goes on to say as follows:

"Brutality is not used today but some other means not known to us is used. Take the cases of Cardinal Mindzenty and Mr. Rajk. Those men actually made full confessions in open court with all appearance of telling the truth. Yet most people outside the concerned countries think that they have been induced by some means or other to say what is untrue. The most credible theory'. says *The Times*, is that Soviet Psychologists have perfected methods of mental aggression which can be applied with success to a great variety of victims....' The same method, with suitable variation in approach might be applied to a Communist Cabinet Minister and a Catholic Cardinal."

The fact that mental aggression should be looked upon in the same manner as we contemplate physical attack is supported by Resolution 3452 (XXX) which was adopted by the General Assembly of the United Nations at its 30th session in 1975. The Resolution states as follows in Article 1 :

"1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment."

Ralph Beddard in his book, *Human Rights and Europe*, Second Edition, 1980 at p. 102 says that "inhuman treatment" was defined by the European Commission of Human Rights in, what is popularly known in this country – see *Thadchanamoorthi v. Attorney-General*

(4), *Velmurugu v. A.G.& Others* (5), as well as elsewhere as, "the Greek case",

"as an aggravated form of inhuman treatment which treatment or punishment may be said to be degrading if it grossly humiliates the individual before others or drives him to act against his will or conscience."

In my view Article 11 of the Constitution prohibits any act by which severe pain or suffering, whether physical or mental is, without lawful sanction in accordance with a procedure established by law, intentionally inflicted on a person (whom I shall refer to as 'the victim') by a public official acting in the discharge of his executive or administrative duties or under colour of office, for such purposes as obtaining from the victim or a third person a confession or information, such information being actually or supposedly required for official purposes, imposing a penalty upon the victim for an offence or breach or a rule he or a third person has committed or is suspected of having committed, or intimidating or coercing the victim or a third person to do or refrain from doing something which the official concerned believes the victim or the third person ought to do or refrain from doing, as the case may be.

I do not think that the facts of this case fall within the terms of the prohibitions contained in Article 11 of the Constitution. Mr. Mansoor's impassioned and eloquent description in terms of the cause and consequence as far as the facts of this case were concerned, appears to me to have been designed to excite and gratify our softer emotions. However he failed to pursuade me by way of logical argument or by reference to a single precedent laid down by this Court or any other tribunal or by reference to any international convention or document or any other guide whatsoever that the Petitioner had, in the relevant sense, been subjected to torture or cruel, inhuman or degrading treatment or punishment. Sentiment is an inadequate guide to decision. The Petitioner may have suffered a great deal of anguish as a result of the acts of the First Respondent, but it has not been established that his conduct was motivated by the sort of reason that would bring the case within the ambit of Article 11 of the Constitution. Learned Counsel for the Petitioner claimed that the acts complained of were inflicted by way of a "punishment" for the reason that the Petitioner gave such information and assistance

to certain investigators which might have implicated the First Respondent in a charge of improper behaviour before the Special Presidential Commission. There was no punishment in the sense relevant to Article 11, namely, the imposition of a penalty for an offence or breach of a rule or supposed offence or breach of a rule. He may have been taking vengeance on account of the feelings of pain, distress and intense disappointment caused to him by the conduct of the Petitioner whose personal loyalty he seemed to have expected to even transcend the higher obligations she owed the State. However, these expressions of resentment did not constitute punishment in the sense in which the word is used in Article 11 of the Constitution.

Article 11 is a species belonging to a certain genera. It belongs to that class which protects life and personal freedom. It belongs to the same family as the fundamental rights of freedom from arbitrary arrest, detention and punishment and retroactive penal legislation. (See Article 13 of the Constitution. Cf. *The International Bill of Rights. Normative and Institutional Developments*, 1948-1985, UNESCO, 1986, Chapter 5. cf. also Lord Denning, *Freedom Under the Law, supra,* Chapter I).

Article 11 is not concerned with the conduct of public officials in relation to such matters as one's contractual rights in a place of work. There may well have been, as submitted by learned Counsel for the Petitioner, such intolerable conduct by the First Respondent which made her contract of employment so difficult that a repudiation of her contract might have been justified. He laid a mass of evidence before us to support his contention that there was enough to sustain his claim that the Petitioner was compelled to go and that she was constructively dismissed. However, such evidence is not sufficient to establish a violation of the Petitioner's fundamental rights under Article 11. In my view the Petitioner formed a wrong idea that redress, if any, due to her for the constructive dismissal she supposed, should be obtained from this Court by an application for relief under Article 126 of the Constitution for the violation of a fundamental right.

Learned Counsel for the Petitioner claimed that the Petitioner's fundamental right to equality before the law and equal protection of the law pledged by Article 12(1) of the Constitution had been violated because the First Respondent had acted in breach of the law relating

to the Petitioner's contract of employment resulting in the constructive termination of her employment. It is well-established law that it is not every breach of a legal right that amounts to a violation of the constitutional pledge of equal protection. (E.g. see *The State of Jammu and Kashmir v. Ghulam Rasool* (15); *Wijesinghe v. Attorney-General* (16); *Wijetunge v. Aluwatuvala and Others* (17); *Elmore Perera v. Major Montague Jayawickreme* (1). The first Respondent, he argued, had violated the provisions of Article 12(1) by preferring Noel Fernando to the Petitioner in the matter of the appointment of a Secretary to the Board of Directors. The Petitioner was appointed to the post of Secretary when Noel Fernando went overseas on long leave. The Board had decided to create a Post of Secretary/Legal Officer. Neither the Petitioner nor Noel Fernando possessed Legal qualifications and Noel Fernando was appointed during the Petitioner's absence on compulsory leave to perform the duties of Secretary which he had done prior to his departure. When the Petitioner returned after her period of compulsory leave was terminated, Noel Fernando continued to act as Secretary to the Board. This, learned Counsel for the Petitioner maintained, was unjust and unfair as far as his client was concerned. The Petitioner failed to discharge the burden that was upon her of showing how she had been discriminated against in the sense that she was subjected to unequal and selective treatment and I am of the opinion that the Petitioner has therefore failed to establish any violation of her fundamental right to equality of treatment. (See *Elmore Perera v. Major Montague Jayawickrema* (1) supra, at pages 300-301).

Learned Counsel for the Petitioner, repeatedly referred to the fact that the Petitioner, although recalled to employment from interdiction, had not been assigned any work whatsoever. This he claimed, was a violation of the Petitioner's fundamental right guaranteed by Article 14(1) (g) which recognizes that every citizen is entitled to "the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise."

Article 14 confers the right to certain freedoms upon citizens of Sri Lanka. There is no dispute that the Petitioner is a Sri Lankan. However, in an application for relief under Article 14(1)(g), the Petitioner must also show that her right to engage in any lawful occupation, profession, trade, business or enterprise was unreasonably obstructed. The Petitioner must go further still and

establish that the right claimed was (a) a legal right and that (b) it is a fundamental right. (cf. H.M. Seervai, *Constitutional Law of India* 2nd Edn., 1975, Vol. 1, at p. 450).

There is no evidence in the matter before us that the Petitioner was prevented in any way from engaging in any lawful occupation, profession, trade, business or enterprise. The complaint was that the Petitioner was frustrated because she had not been assigned any work at all although she was paid her due wages.

Perhaps there is a moral right to earn one's living and to enjoy the warm glow of satisfaction that visits a conscientious soul at the end of a day of honest endeavour. "Never one of you have eaten better food than that which he has earned with his own hands," says the Holy Prophet Mohamed. (See Ali Abdul Wahid Wafi in *The Problems of Human Rights in the Islamic Tradition,* Round-Table Meeting on Human Rights, Oxford, 11-19 November, 1965, UNESCO Human Rights Teaching, Vol.IV, 1985 at p. 39). Whether an employer's legal duty is to provide wages as well as work is an uncertain matter. (E.g. see *Collier v. Sunday Referee Publishing Co. Ltd.* (18); *Marbe v. George Edwardes, Daily Theatre Ltd* (19); *Herbert Clayton & Jack Waller Ltd. v. Oliver* (20); *Hall v. British Essence Co. Ltd.* (21); *Titmus and Titmus v. Rose and Watts* (22); *Dunk v. George Watter & Sons Ltd* (23); *Langston v. Amalgamated Union of Engineering Workers* (24); *Breach v. Epsylon Industries Ltd.* (25); *Turner v. Lawdon* (26) and *Bosworth v. Angus Jowett & Co. Ltd.* (27). If there is no legal duty on an employer to provide work, there can be no corresponding legal right to work.

Even if I were prepared to go so far as to hold that the Petitioner was, by reason of an implication in her contract of employment, entitled to claim a legal right to work, in the sense that she has a right to have the opportunity of doing work when it is there to be done, I am unable to agree with learned Counsel for the Petitioner that the failure to provide the Petitioner with work violates any right guaranteed by Article 14(1)(g) of the Constitution. That Article recognizes the right of every citizen to use his powers of body and mind in any lawful calling; to pursue any lawful livelihood and avocation. It confers no obligation to give any particular kind of work or indeed any right to be continued in employment at all. (cf. per Ismail, Weeraratne and Wanasundera, JJ. in *R.P.Jayasena & Others*

v. K.R.S. Soysa and Another (28). There may have been a breach of a contractual right in regard to which a complaint may have been successfully made to another forum – it is a matter on which I do not wish to make any observations in this case – but there has been no breach of a fundamental right conferred by Article 14(1)(g), namely the right to pursue any lawful livelihood or avocation, and, consequently, I hold that the Petitioner is not entitled to any relief for a violation of Article 14(1)(g) of the Constitution.

The Petitioner has, with remarkable courage in pain and adversity, remained in her employment and endeavoured to restore a desired or desirable state of circumstances relating to her employment by lawful means. With some reluctance, therefore, but with no doubt that she has misconceived the remedies available to her under the law, I declare that the Petitioner's rights under Article 11,12(1) and 14(1)(g) have not been violated and consequently I make order dismissing the application of the Petitioner but without costs.

Application dismissed.