

**SOMATUNGA AND OTHERS**  
**vs.**  
**CEYLON FERTILIZER COMPANY**  
**AND OTHERS**

COURT OF APPEAL,  
SRIPAVAN, J  
BASNAYAKE, J  
CA 2370/2004  
JUNE 27TH, 2005

*Conversion of Public Corporations or Government owned business undertakings into Public Companies Act, 23 of 1987. Sec. 2 (1) - Sec. 3(1) (e) - Companies Act, No. 17 of 1982 - Former Employees becoming employees of the New Company - Right to ask for extension ? - Legitimate expectation - Contractual or Statutory right ?*

The 1st Respondent Company was established under the provisions of Act 23 of 1987 (Conversion Act) to take over the business of the Ceylon Fertilizer Corporation. All employees who were not offered employment were granted compensation and employees of the corporation to whom employment was offered became employees of the company. The Respondent refused the application of these employees for extension of service after the statutory age of retirement till they reached the age of 60.

The Petitioner sought a Writ of Certiorari to quash the decision refusing the extension.

**HELD**

- (1) The Act 23 of 1987 does not deal with the question of extension of service of employees of the company at all.
- (2) If the refusal to grant extension was in breach of the terms of employment contract the proper remedy is an action for declaration for damages.
- (3) The Petitioners have no legal right to insist on the first Respondent to extend their services on the basis of a right conferred by any statutory provisions nor the first Respondent under a statutory duty to extend the Petitioners Service.

*Application for Writ of Certiorari*

**Cases referred to :**

1. *Chandradasa Vs. Wijyaratne (1982) 1 Sri LR 412*
2. *Trade Exchange (Ceylon) Limited Vs. Asian Hotels Corporation Ltd. (1981) 1 Sr. LR 67*

*Sunil Cooray with G. Rodrigo for Petitioner*

*Nimal Weerakkody for 1st and 2nd Respondent*

*Y. J. W. Wijayatillake - DSG for 3rd, 4th and 5th Respondents*

*Cur.adv.vult*

July 11, 2005

**SRIPAVAN, J.**

The petitioners are employees of the first respondent company. It is common ground that the first respondent company was established under the provisions of Conversion of Public Corporation of Government Owned Business Undertakings into Public Companies Act, No. 23 of 1987 to take over the business of the Ceylon Fertilizer Corporation. In terms of Section 2 (1) of the said Act where the Cabinet of Ministers considers it necessary that a company should be incorporated in order to take over the functions of a Public Corporation, the Minister may in consultation with the Minister-in-Charge of the subject of Finance, forward a memoran-

dum and articles of Association to the Register of Companies, together with a direction to register such Public Corporation as a Public Company under the Companies Act, No. 17 of 1982. On receipt of such direction, the Registrar of Companies is mandated to publish an order in the Gazette declaring that a Public Company is incorporated and shall allot all the shares into which the share capital of the Company is divided to the Secretary to the Treasury in his official capacity for and on behalf of the state.

In terms of Sec. 3(1)(e) of the said Act all officers and servants of the Corporation who are not offered employment with the company shall be entitled to the payment of compensation. Thus the employees of the Corporation to whom employment is offered become the employees of the Company. The petitioners' substantial complaint was that the petitioners being employees of the company have a legitimate right and expectation to ask for extensions of service after the statutory age of retirement till they reach the age of sixty ; and the the decision of the first respondent board refusing to grant extension was ultra vires and unreasonable. Accordingly, the petitioners seek to quash by writ of certiorari the letters marked P8(a), P9(a), P9(j), P10(a) and P11(a) whereby the extensions were refused.

At the hearing, learned Counsel for the first respondent raised an objection that the impugned orders were not made in the exercise of any statutory power but was one made in pursuance of purely contractual rights. No doubt the company was established under Act, No. 23 of 1987. But the question is when the first respondent board refused extension did it do so in the exercise of any statutory power ? The Act does not deal with the question of extension of service of employees of the company at all. If the refusal to grant extension of service was in breach of the terms of the employment contract, the proper remedy is an action for declaration for damages. A similar sentiment was expressed by Thambiah, J in *Chandradas Vs. Wijeyaratne*<sup>(1)</sup>.

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It may be relevant to consider the case of *Trade Exchange (Ceylon) Limited Vs. Asian Hotels Corporation Limited*<sup>(2)</sup> where a three-judge bench of the Supreme Court held that the action of a public commercial company incorporated under the Companies Ordinance, although its capital was mostly contributed by the Government and was controlled by the Government, is a separate juristic person and its actions are not subject to judicial review in an application for a writ of certiorari. Sharvananda, J (as he then was) at page 76 observed as follows :

"The activities of private persons, whether natural or juristic, are outside the bounds of administrative law. A public commercial company like the respondent, incorporated under the Companies Ordinance in which the Government or a Government sponsored Corporation holds shares, controlling or otherwise, is not a public body whose decisions, made in the course of its business, can be reviewed by this court by way of writ."

Moreover, the petitioners have no legal right to insist on the first respondent to extend their services on the basis of a right conferred by any statutory provision. Nor the first respondent is under a statutory duty to extend the petitioners' services. Thus, the petitioner's application for relief by certiorari must fail. Accordingly, the court does not see any justifiable ground to extend the interim orders. The interim orders issued by this court on 11.01.2005 and 19.01.2005 are not extended any further.

Basnayake, J - I agree,

Application dismissed.

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