H.L. TREHAN AND ORS. ETC.

v.

UNION OF INDIA AND ORS. ETC.

NOVEMBER 22, 1988

[MURARI MOHON DUTT, S. NATARAJAN AND N.D. OJHA, JJ.]

The Caltex (Acquisition of shares of Caltex Refining (India) Ltd. and of the Undertakings in India of Caltex (India) Ltd.) Act, 1977, ss. 3 and 11—Management staff—Rationalisation of perquisites and allowances—Whether permissible without affording opportunity to staff.

Administrative Law—Existing conditions of service—No deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without affording an opportunity—Post-decisional opportunity—Whether subserves rules of natural justice.

The Caltex (Acquisition of Shares of Caltex Refining (India) Ltd. and of the Undertakings in India of Caltex (India) Ltd.) Act 17 of 1977, by Section 3 provides for the acquisition of shares of Caltex Oil Refinery (India) Ltd. (for short CORIL). Section 11(2) of the Act provides that subject to rules made in this behalf under section 23, every whole time officer or other employee of CORIL would, on the day of acquisition, continue to be an officer or other employee of CORIL on the same terms and conditions and with the same rights to pension, gratuity and other matters as are admissible to him immediately before that day and shall continue to hold such office unless and until his employment under CORIL is duly terminated or until his remuneration and conditions of service are duly altered by that company.

Consequent upon the taking over of the CORIL on December 30, 1976, the Chairman of the Board of Directors of CORIL issued a circular dated 8th March, 1978 to the effect that the perquisites admissible to the management staff of CORIL should be rationalised in the manner stated in the said circular. At this stage the undertaking of CORIL was transferred and vested in the Hindustan Petroleum Corporation Ltd.—the appellant in C.A. No. 3214 of 1979.

Respondent Nos. 1 to 4, employees of CORIL in the said appeal, filed a writ petition before the High Court challenging the legality and

A validity of the impugned circular on the ground, *inter alia*, that the employees had not been given any opportunity of being heard before altering to their prejudice the terms and conditions of service and therefore the impugned circular should be struck down as void being opposed to the principles of natural justice. The High Court accepted the aforesaid contention of the respondents and quashed the impugned B circular. Hence this appeal by special leave. Civil Appeal 3212 of 1979 has been preferred by the respondents.

Dismissing the appeals,

HELD: 1. The High Court was perfectly justified in quashing the impugned circular. Even if any hearing was given to the employees C of CORIL after the issuance of the impugned circular that would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. [932A-B]

D 2(i) It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a E government servant will offend against the provision of Article 14 of the Constitution. [930F-G]

2(ii) The post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there F is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. [931A-B]

K.I. Shephard & Ors. v. *Union of India & Ors.*, JT 1987 600, followed.

G In view of the reasons given in the above appeals, the Court dismissed C.A. No. 3518 of 1979. [932C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3212 of 1979 etc.

H From the Judgment and Order dated 20.8.1979 of the Delhi High

Court in Civil Writ Petition No. 426 of 1978.

Rajinder Sachar, G.B. Pai, Narayan Shetty, K.T. Anantharaman, Mrs. P.S. Shroff, S. Shroff, Ms. Girija Krishan, C.C. Mathur, A.M. Mittal, D.N. Mishra, Dalbir Bhandari, Ms. C.K. Sucharita and Ms. A. Subhashini for the appearing parties.

The Judgment of the Court was delivered by

DUTT, J. Of these three appeals by special leave, we may first of all deal with Civil Appeal No. 3214 of 1979 for, admittedly, the disposal of that appeal will virtually mean the disposal of the other two appeals. The said Civil Appeal No. 3214 of 1979 is directed against the judgment of the Delhi High Court whereby the High Court has quashed a circular dated March 8, 1978 issued by the Board of Directors of Caltex Oil Refinery (India) Ltd. (for short 'CORIL'), a Government Company, on the writ petition filed by the employees of CORIL being Writ Petition No. 426 of 1978.

The Caltex (Acquisition of Shares of Caltex Refining (India) Ltd. and of the undertakings in India of Caltex (India) Ltd.) Act 17 of 1977, hereinafter referred to as 'the Act', was enacted by the Union Parliament and came into force with effect from April 23, 1977. The Act provides for the acquisition of shares of CORIL and for the acquisition and transfer of the right, title and interest of Caltex (India) Ltd. in relation to its Undertakings in India with a view to ensuring co-ordinated distribution and utilisation of petroleum products.

Under section 3 of the Act, the shares in the capital of the CORILS stood transferred to and vested in the Central Government on the appointed day being December 30, 1976. Under section 5, the right, title and interest of Caltex (India) Ltd. in relation to its Undertakings in India stood transferred to and vested in the Central Government on the appointed day. Section 9 of the Act provides that the Central Government may by a notification direct that the right, title and interest and the liabilities of Caltex (Inida) Ltd. in relation to any of its Undertakings in India shall, instead of continuing to vest in the Central Government, vest in the Government Company either on the date of the notification or on such earlier or later date not being a date earlier than the appointed day, as may be specified in the notification. Section 11(2) provides that subject to rules made in this behalf under section 23, every whole-time officer or other employee of CORIL would on the appointed day continue to be an officer or other

A employee of CORIL on the same terms and conditions and with the same rights to pension, gratuity and other matters as are admissible to him immediately before that day and shall continue to hold such office unless and until his employment under CORIL is duly terminated or until his remuneration and conditions of service are duly altered by that company.

B

The Chairman of the Board of Directors of CORIL issued the impugned circular dated March 8, 1978, *inter alia,* stating therein that consequent upon the take over of the Caltex (India) Ltd. by the Government, the question of rationalisation of the perquisites and allowances admissible to Management Staff had been under consideration of the Board for sometime, and that as an interim measure, the C Board had decided that the perquisites admissible to the Management Staff should be rationalised in the manner stated in the said circular.

At this stage, it may be mentioned that by the Caltex Oil Refinery (India) Ltd. and Hindustan Petroleum Corporation Ltd. Amalga- D mation Order, 1978 which was published in the Gazette of India, Extraordinary, dated May 9, 1978, the Undertaking of CORIL was transferred to and vested in Hindustan Petroleum Corporation Ltd. which thus became a Government Company referred to in section 9 of the Act.

E After the issue of the said circular, the respondent's Nos. 1 to 4, who were some of the employees of CORIL, filed a writ petition in the Delhi High Court being Civil Writ Petition No. 426 of 1978 challenging the legality and validity of the impugned order. It was submitted by the said respondents that under the said circular the terms and conditions of service of the employees of CORIL had been substantially and F adversely altered to their prejudice.

At the hearing of the said writ petition before the High Court it was contended on behalf of the respondents Nos. 1 to 4 that the notification issued under section 9 of the Act vesting the management of the Undertakings of Caltex (India) Ltd. in CORIL was *ultra vires* sub- G section (1) of section 9. It was contended that the provision of sub-section (1) of section 11 of the Act offended against the provisions of Articles 14, 19 and 31 of the Constitution of India and, as such, it should be struck down. Further, it was contended that there was no valid classification between the contracts referred to in section 11(1) and section 15 of the Act. It was urged that unguided and arbitrary H powers had been vested in the official by sub-section (1) of section 11

for the alteration of the terms and conditions of service of the employees. Besides the above contentions, another contention was advanced on behalf of the respondents Nos. 1 and 4, namely, that the employees not having been given an opportunity of being heard before altering to their prejudice the terms and conditions of service, the impugned circular should be struck down as void being opposed to the principles of natural justice.

All the contentions except the last contention of the respondents Nos. 1 to 4 were rejected by the High Court. The High Court, however, took the view that as no opportunity was given to the employees of CORIL before the impugned circular was issued, the Board of Directors of CORIL acted illegally and in violation of the principles of natural justice. In that view of the matter, the High Court quashed the impugned circular. Hence this appeal by special leave.

It is not disputed that the employees were not given any opportunity of being heard before the impugned circular dated March 8, 1978 was issued. It is, however, submitted by Mr. Pai, learned Counsel appearing on behalf of CORIL, that there has been no prejudicial alteration of the terms and conditions of service of the employees of CORIL by the impugned circular. It is urged that nothing has been pleaded by the respondents Nos. 1 to 4 as to which clauses of the impugned circular are to their detriment. The High Court has also not pointed out such clauses before quashing the impugned circular. It appears that for the first time before us such a contention is advanced on behalf of CORIL. In this connection, we may refer to an observation of the High Court which is "Admittedly, the impugned order adversely affects the perquisites of the petitioners. It has resulted in civil consequences." The above observation clearly indicates that it was admitted by the parties that the impugned circular had adversely affected the terms and conditions of service of the respondents Nos. 1 to 4 who were the petitioners in the writ petition before the High Court. Mr. Sachhar, learned Counsel appearing on behalf of the respondents Nos. 1 to 4, has handed over to us a copy of the writ petition filed by the respondents Nos. 1 to 4 before the High Court being Civil Writ Petition No. 426 of 1978. In paragraph 12 of the writ petition it has been *inter alia* stated as follows:

> "The petitioners respectfully submit that under the said circular the terms and conditions of service of the employees of the second respondent including the petitioners herein have been substantially and adversely

A altered to the prejudice of such employees. The same would be clear *inter alia* from the statements annexed hereto and marked as Annexure IV."

Annexure IV is a statement of Annual Loss in Remuneration/ Income per person/employee posted at Delhi and U.P. Nothing has B been produced before us on behalf of CORIL or the Union of India to show that the statements contained in Annexure IV are untrue. In the circumstances, there is no substance in the contention made by Mr. Pai that there has been no prejudicial alteration of the terms and conditions of service of the employees of CORIL, and that nothing has been pleaded by the respondents Nos. 1 to 4 as to which clauses of the C impugned circular are to their detriment.

One of the contentions that was urged by the respondents Nos. 1 to 4 before the High Court at the hearing of the writ petition, as noticed above, is that unguided and arbitrary powers have been vested in the official by sub-section (1) of section 11 for the alteration of the D terms and conditions of service of the employees. It has been observed by the High Court that although the terms and conditions of service could be altered by CORIL, but such alteration has to be made 'duly' as provided in sub-section (2) of section 11 of the Act. The High Court has placed reliance upon the ordinary dictionary meaning of the word 'duly' which, according to Concise Oxford Dictionary, means 'rightly, E properly, fitly' and according to Stroud's Judicial Dictionary, Fourth Edition, the word 'duly' means 'done in due course and according to law'. In our opinion, the word 'duly' is very significant and excludes any arbitrary exercise of power under section 11(2). It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Govern- F ment servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend against the provision of Article 14 of the Constitution. Admittedly, the employees of CORIL were not given an opportunity of G hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular cannot, therefore, be sustained as it offends against the rules of natural justice.

It is, however, contended on behalf of CORIL that after the impugned circular was issued, an opportunity of hearing was given to H the employees with regard to the alterations made in the conditions of

their service by the impugned circular. In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. In this connection, we may refer to a recent decision of this Court in *K.I. Shephard & Ors.* v. *Union of India & Ors.*, JT 1987 (3) 600. What happened in that case was that the Hindustan Commercial Bank, The Bank of Cochin Ltd. and Lakshmi Commercial Bank, which were private Banks, were amalgamated with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn under section 45 of the Banking Regulation Act, 1949. Pursuant to the schemes, certain employees of the first mentioned three Banks were excluded from employment and their services were not taken over by the respective transferee Banks. Such exclusion was made without giving the employees, whose services were terminated, an opportunity of being heard. Ranganath Misra, J. speaking for the Court observed as follows:

> "We may now point out that the learned Single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand, the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then given them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

The view that has been taken by this Court in the above observation is that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose.

A Thus, even if any hearing was given to the employees of CORIL after the issuance of the impugned circular, that would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. The High Court, in our opinion was perfectly justified in quashing the impugned
B circular.

In the result, Civil appeal No. 3214 of 1979 is dismissed.

In view of the reasons given in Civil Appeal No. 3214 of 1979, Civil Appeal No. 3518 of 1979 is also dismissed.

C Civil Appeal No. 3212 of 1979 has been preferred by the writ petitioners in civil Writ Petition No. 426 of 1978 filed before the High Court. The writ petitioners succeded in getting the impugned circular quashed by the High Court. As the High Court rejected some of the grounds of challenge to the impugned circular, the appeal has been
D preferred. There is no merit in this appeal and it is wholly misconceived. The appeal is, therefore, dismissed.

There will be no order as to costs in any of these appeals.

M.L.A. Appeal dismissed.