

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF  
SRI LANKA

In the matter of an application for a Writ  
of Certiorari in terms of Article 140 of  
the Constitution of the Democratic  
Socialist Republic of Sri Lanka

Power Star Engineering (Private) Ltd.  
1A, Pirivena Road, Mount Lavinia.

**Petitioner**

C.A. (Writ) Application No.197/2010

Vs.

1. Consumer Affairs Authority  
1<sup>st</sup> and 2<sup>nd</sup> Floors,  
CWE Secretariat Building,  
27, Vauxhall Street, Colombo 02.  
And 04 Others

**Respondents**

BEFORE : **S.SRISKANDARAJAH, J (P/ CA).**

**H.N.J.PERERA, J**

COUNSEL : Sumedha Mahawanniarachchi with Amilavithana  
for the Petitioner.

Yuresha de Silva, SC

for 1<sup>st</sup> to 5<sup>th</sup> Respondents.

Mahinda Jayawardana

for 6<sup>th</sup> and 7<sup>th</sup> Respondent

Argument on : 28.07.2011

Decided on : 02.10.2012

**S.Sriskandarajah, J.**

The Petitioner is a company incorporated in Sri Lanka. The Petitioner sold an electric motor car to the 6<sup>th</sup> Respondent South Asian Institute of Technology and Management on 20<sup>th</sup> April 2009, and it was registered with the Registrar of Motor Vehicles. The Petitioner admits, thereafter he received several complaints from the 6<sup>th</sup> Respondent regarding the car, and by letter dated 17<sup>th</sup> August 2009, the 7<sup>th</sup> Respondent, who is the Chairman of the 6<sup>th</sup> Respondent Company, informed the Petitioner that the car was incapacitated. The Petitioner submitted that the 7<sup>th</sup> Respondent had made a complaint to the Consumer Affairs Authority in relation to the car and a request was made for the Petitioner's representative to attend an inquiry. The Petitioner attended the inquiry, and although the inquiry was mainly in relation to the alleged technical defect and poor performance of the car, the 1<sup>st</sup> Respondent did not even inspect the car or test drive the car in order to ascertain whether it is not suitable for the purpose for which it was sold, and whether there is a truth in the allegations made. The Petitioner submitted that after calling for several documents from the Petitioner, the 1<sup>st</sup> Respondent, by its letter dated 22<sup>nd</sup> December 2009, forwarded a letter of the 2<sup>nd</sup> to the 5<sup>th</sup> Respondents on behalf of the 1<sup>st</sup> Respondent directing the Petitioner to pay a sum of Rs.300,350/- to the 7<sup>th</sup> Respondent in terms of Section 13(4) of the Consumer Affairs Authority Act No.9 of 2003. The Petitioner in this application is seeking a Writ of Certiorari to quash the decision of the 1<sup>st</sup> Respondent dated 13/01/2010 and the finding of the Panel of Inquirers dated 22<sup>nd</sup> December 2009.

The Petitioner contended that the decision of the 1<sup>st</sup> Respondent is arbitrary, unreasonable and ultra vires for the reason that the Petitioner had never sold anything to the 7<sup>th</sup> Respondent to whom the 1<sup>st</sup> Respondent has ordered to pay money. The complaint received by the 1<sup>st</sup> Respondent in relation to the sale of the car is not the type of complaint that could be considered in terms of Section 12 of the said Act. It is the submission of the Petitioner that the quality of the vehicle is not something that would be detected only when purchased and using of the same, but it is a quality that could be detected upon the first test drive itself. The 6<sup>th</sup> Respondent could not have expected to get the performance of petrol powered vehicle from an electric vehicle when he purchased the vehicle, and the 7<sup>th</sup> Respondent who is a highly qualified and educated person and the person who selected the vehicle on behalf of the 6<sup>th</sup> Respondent should have taken the precaution of satisfying himself that it is the correct vehicle for the purpose for which the 6<sup>th</sup> Respondent wanted the vehicle. It is the contention of the Petitioner that the intention of the legislature in enacting the Consumer Affairs Authority Act No.9 of 2003 was not to allow persons who are having second thoughts about their purchase, to return the purchase and get a full refund, but to ensure that the defective products are not being sold. It is in evidence that the Petitioner had sold a brand new electric car to the 6<sup>th</sup> Respondent by way of an invoice dated 20/02/2009. The 7<sup>th</sup> Respondent is the Managing Director and the 6<sup>th</sup> Respondent Company had complained to the Petitioner with regard to the technical defects of the said car. It is the contention of the 7<sup>th</sup> Respondent that the said electric car was not able to climb even the slightest incline and would stall on the road in the midst of traffic. The car, once charged, only runs for 40 kilometers and not for 100 kilometers, as stated by the Petitioner.

The 6<sup>th</sup> and 7<sup>th</sup> Respondents stated that complaints were made to the Petitioner on many occasions to repair the said car, but they were unable to repair the said electric car and, as the said electric car was not fit for use for the purpose it was sold, and it was not up to the standard and it has technical defects, the 6<sup>th</sup> Respondent made a complaint to

the Consumer Affairs Authority. The Consumer Affairs Authority, after holding an inquiry, consisting of a Panel of 5 officers, had come to the conclusion that the said electric car was not fit for use for the purpose it was sold and, by order dated 22<sup>nd</sup> December 2009, directed the Petitioner to pay the 7<sup>th</sup> Respondent a sum of Rs.350,000/- on or before 13<sup>th</sup> February 2010.

The 1<sup>st</sup> Respondent Authority has considered the fact that there is an implied warranty that the goods sold would be fit for the purpose for which it is sold. As the warrantee is breached, the 1<sup>st</sup> Respondent is entitled to make an order to reimburse the purchase price. The Petitioner has not submitted any valid reason to quash the said order of the 1<sup>st</sup> Respondent. In these circumstances this Court dismisses this application without costs.

President of the Court of Appeal

**H.N.J.Perera,J**

I agree,

Judge of the ~~Court~~ Court of Appeal