

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

In the matter of an application for orders
in the nature of Writ of Certiorari,
Prohibition and Mandamus in terms of
Article 140 of the Constitution.

Aqua Technologies (Private) Limited,
25, Epitamulla Road,
Pitakotte.

PETITIONER

C.A. (Writ) Application No.1068/2007

Vs.

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

RESPONDENTS

BEFORE : S.SRISKANDARAJAH, J (P/ CA).
COUNSEL : Ms.I.R.Rajepakse,
for the Petitioners.

Vikum de Abrew

for the 1st Respondent

Rohan Sahabandu,

for the 2nd Respondent.

Argued on : 17.06.2010 and 03.08.2010

Written Submission : 02.09.2010 (Petitioners)
28.10.2010 (1st Respondents)
26.11.2010 (2nd Respondent)

Decided on : 21.09.2012

S.Sriskandarajah, J.

The Petitioner's business includes the supply of water treatment plants to customers. The 3rd Respondent is the provider of service in relation to goods supplied by the Petitioner. The Petitioner submitted that on or about the 1st February 2005, at the request of the 2nd Respondent, the Petitioner supplied a reverse osmosis water treatment plant for the 2nd Respondent's hotel. The Petitioner further submitted that by letter dated 25/05/2005, the 2nd Respondent brought to the attention of the Petitioner a problem relating to the plant's filter. The Petitioner referred the said problem to the 3rd Respondent as the said problem was a service matter. The said problem was looked into and attended by the 3rd Respondent. The Petitioner thereafter received a letter of demand dated 8th December 2005 from an Attorney-at-Law of the 2nd Respondent claiming a sum of Rs.1,409,267.50 from the Petitioner, allegedly being the sum for which the 2nd Respondent had purchased the said water treatment plant from the Petitioner. The 2nd Respondent had also annexed a report from a qualified Engineer regarding defects in the said plant. Thereafter the Petitioner submitted that he received a letter

from the 1st Respondent dated 23/03/2006 which referred to a complaint dated 16/01/2006, made by an officer of the 2nd Respondent, and the Petitioner was called for a discussion and, accordingly, the Petitioner sent a representative for the said discussion.

The Petitioner submitted that thereafter the Petitioner received a letter from the 1st Respondent dated 25/09/2006, informing that the said Respondent had decided to hold an inquiry into the said matter which was fixed for the 5th of October 2006. Petitioner was informed that the inquiry into the said matter was re-fixed for 15/11/2006. On 15/11/2006, the Petitioner sent its Chemical Engineer, one H.S.P. Fonseka, to the office of the 1st Respondent. According to the Petitioner, the Inquirer, at the commencement of the inquiry, had inquired from the Petitioner's representative, whether he was ready for the inquiry or whether he is prepared to enter into a settlement. The Petitioner's representative did not answer this question and, at the said inquiry, the 2nd Respondent's Attorney-at-Law was permitted to make submissions. The Petitioner submitted that thereafter further proceedings were held on 5/12/2006, 18/12/2006 and 23/01/2007 and an Inspection Panel of the 1st Respondent inspected the premises of the 2nd Respondent. The 1st Respondent made its order dated 9/07/2007 in which it directed the Petitioner to pay to the 2nd Respondent a total sum of Rs.2,156,630.50 being the aggregate of the cost of the aforesaid water treatment plant (Rs.1,409,267.50) and other expenses allegedly incurred by the 2nd Respondent as a result of the malfunctioning of the said plant. This order was communicated to the Petitioner and the Petitioner was required to pay the said sum within 30 days from the said order. The Petitioner in this application has sought a Writ of Certiorari to quash the order of the 1st Respondent marked P22(a) and has also sought a Writ to quash the order of the 1st Respondent dated 15/11/2006 directing the Petitioner to pay cost of Rs.2,500/-.

The Petitioners challenge to the said order is that the 1st Respondent has not followed the rules of natural justice, and the said application to the 1st Respondent was

prescribed in terms of Section 13(2) of the Consumer Affairs Authority Act, and the sum awarded to be paid by the Petitioner is not justified in law and/or is grossly excessive.

The Petitioner's first objection in this application is that the 1st Respondent has entertained the complaint of the 2nd Respondent even though the said complaint was prescribed in terms of Section 13(2) of the Consumer Affairs Authority Act. It is pertinent to note that the Petitioner had not taken up this objection before the 1st Respondent when the inquiry was held before the 1st Respondent. The petitioner had acquiesced in the proceedings before the 1st Respondent as it had not taken up this objection before the 1st Respondent. As such the Petitioner cannot raise the said objection in a judicial review proceedings before the Court of Appeal. In any event, the said complaint is not prescribed in terms of Section 13(2) of the Consumer Affairs Authority Act as the complaint is in relation to the mal-functioning of the plant, within the period of guarantee given by the Petitioner to the said plant. Section 13(1) which authorizes the Authority to inquire into complaints regarding:

- (a) Supply or sale of goods which does not conform to the standard and specification determined under Section 12;
- (b) Manufacture or sale of any goods which does not conform to the warrantee or guarantee given by implication or otherwise by the manufacturer or trader.

The said inquiry to the complaint was conducted under Section 13(1)(b) of the Consumer Affairs Authority Act No.9 of 2003. Section 13(2) of the said law prescribes a 3 months time period to make complaints to the 1st Respondent Authority from the sale of such goods or provision of such services as the case may be. But this time period will not cover the situation where the complaint is in relation to Section 13(1)(b) of the said

Act where the manufacture or sale of any goods which does not conform to the warrantee or guarantee given by implication or otherwise.

It is an admitted fact that the said Water Treatment Plant was installed on or about the 1st March 2005 at the Lotus Villa Hotel, owned by the 2nd Respondent, and the guarantee period given by the Petitioner Company was one year and the complaint was made by the 2nd Respondent to the 1st Respondent in relation to the mal-functioning of the said water treatment plan was on 16th of January 2006. This was well within the guarantee period and the inquiry commenced on 15/11/2006 and thereafter the inquiry was held on 5/12/2006, 18/12/2006, 23/01/2007 and 13/02/2007, the order was delivered on 9/07/2007. The inquiry was conducted before a panel of four Inquirers. In all the above proceedings, the Petitioner was given a fair opportunity to present and place his case before the Inquirers. In the above circumstances the Petitioner cannot claim that the Petitioner was not given a fair hearing in the said inquiry, and the objection that the said complaint was out of time has no merit. It had been held by this court on numerous occasions that the time limit of 3 months stipulated in Section 13(2) of the said Act will not apply to a complaint made under Section 13(1)(b) - *David Peiris Motor Company Limited Vs. Consumer Affairs Authority, CA Application No.635/2007 (Writ CA Mandates 38/2009.*

The Petitioner in this application has sought a Writ of Certiorari to quash the order dated 15/11/2006 directing the Petitioner to pay cost of Rs.2,5000/-. This order of cost was made by the 1st Respondent Authority on the very first day of inquiry conducted by the 1st Respondent in relation to the said complaint. It appears that the Petitioner was not ready on the said date and the cost was awarded for that purpose.

The said law under Section 13(1) empowers the Consumer Affairs Authority to inquire into complaints. Section 13(3) provides that on an inquiry held into the complaint under sub-section 1, the Authority shall give the manufacturer or trader

against whom such complaint is made, an opportunity of being heard either in person or by an agent nominated in that behalf. The law requires the authority to provide an opportunity to the manufacturer or trader against whom a complaint is made. But the manufacturer or trader had not made use of this opportunity or if present and requests for another date to present their case, the Authority, on its discretion can permit the manufacturer or trader to present his case on a subsequent date convenient to parties in order to adhere to the rules of natural justice. But the fact that the manufacturer or trader against whom a complaint is made is not ready on a particular date to present his case, the Authority cannot impose a punishment or sanctions by way of imposing cost on the manufacturer or trader. If the Authority is of the opinion that the manufacturer or trader is seeking postponement to cause undue delay, or that is not co-operating with an inquiry, the Authority could proceed ex-parte and come to a finding, but the Authority has no power under the said law to impose sanctions on the manufacturer or trader to pay cost and, therefore, I issue a Writ of Certiorari to quash the order dated 15/11/2006 directing the Petitioner to pay cost of Rs.2,500/-.

The 1st Respondent Authority, after an inquiry is empowered under the law to grant specific relief under Section 13(4) of the said law, viz., "It shall order the manufacturer or trader to pay compensation to the aggrieved party or to replace such goods or to refund the amount paid for such goods or provision of such services as the case may be." The reading of the said section in the background of the power given to the Authority in general, in the said Act, to inquire into complaints in relation to manufacture or sale of any goods which does not conform to the standards and specification or to the warrantee or guarantee given by implication or otherwise, one could see that the intention of the legislature is to protect a consumer who purchases goods or obtains services from a manufacturer or supplier. The consumer is entitled to make complaints in relation to any defects to the said product and in return the consumer would be compensated by replacing such goods or to refund the amount paid for such goods. The compensation referred under the said section would extent to

replace or repair the said goods supplied to bring back the said goods to the standard required. This section does not provide for specific or general damages caused to the consumer by the mal-functioning or defect of the said goods. General or specific damages incurred by a consumer have to be specifically pleaded and claimed in a civil suit. This law does not provide for such a procedure to go into evidence and to determine compensation, therefore, the 1st Respondent Authority has no power under the said law to award any sum as compensation other than it is provided under Section 13(4). In these circumstances this court quashes a part of the order made by the 1st Respondent Authority as the 1st Respondent's order for compensation has several components; one is the sum spent for the purchase, viz., Rs.1,409,257/50 and the sum spent by the Respondent to keep the business going till the machine was put right which the Authority assessed at Rs.747,372/21 as these two components are divisible and that the Authority has no power to award damages incurred by the 2nd Respondent to keep the business going due to the mal-functioning of the machine.

This court quashes that part of the order, viz., the sum awarded as the amount identified by the Authority as the sum spent by the Respondent to keep the business going, i.e., Rs.747,372/21, and the court allows the order made by the 1st Respondent to award a compensation amounting to the total sum spent by the 2nd Respondent to purchase the said machinery amounting to Rs.1,409,267.50. Therefore, this court only allows the order of the 1st Respondent directing the Petitioner to pay the sum spent for the purchase of the said equipment of Rs.1,409,267.50 and quash the rest of the orders made by the 1st Respondent Authority.

For the aforesaid reason, this court partially allows the application for a Writ of Certiorari prayed for by the Petitioner in the petition and, in these circumstances no cost awarded.

President of the Court of Appeal