

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

In the matter of an application for the issue
of writs in the nature of Certiorari under
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Coca-Cola Beverages Sri Lanka Ltd,
Tekkawatte,
Biyagama.

Petitioner

C.A/WRIT/App/No. 326/2006

Vs.

1. Consumer Affairs Authority,
1st and 2nd Floor
CWE Secretariat Building,
27, Vauxhall Street,
Colombo 2.
 2. Hewa Halpage Somasena
No.59, Avissawella Road
Kotikawatta.
- And eight (08) others.

Respondents

BEFORE : S.SRISKANDARAJAH, J
COUNSEL : Chandana Prematilaka,
for the Petitioner.
Anusha Fernando Samaranayake S.S.C
for the 1st Respondent.

Argued on : 09.11.2010
Written Submission on : 10.12.2010 (Petitioner)
: 13.12.2010 (Respondent)
Decided on : 18.02.2011

S.Sriskandarajah, J

The Petitioner in this application has sought a writ of certiorari to quash the order of the 1st Respondent dated 24.10.2005 and the findings therein that the Petitioner was responsible for having released the bottle in question to the market with a impurity and it had violated the provisions of Section 13 of the Consumer Affairs Authority Act and the Petitioner should pay a sum of Rs 50,000/- as compensation to the 2nd Respondent.

The contention of the Petitioner is that the complaint of the 2nd Respondent cannot in law be treated under Section 13(1)(b) of the Consumer Affairs Authority Act but should be treated under Section 32(3) of the said Act and hence the Authority has acted without jurisdiction. The Petitioner has also challenged the aforesaid order on the basis that the 2nd Respondent is not entitled for compensation in the circumstances of the case.

The 2nd Respondent made a complaint to the Consumer Affairs Authority on 11th March 2004 to the effect that he had on 24.01.2004 purchased five 1 ½ Litre Lion Club Soda Bottles manufactured by the Coca-Cola Beverages Sri Lanka Ltd (Petitioner) from an out let and when one of the said bottles was about to be opened on the following day a cockroach was discovered inside the bottle. The Petitioner contented that the aforesaid complaint of the 2nd Respondent should have been treated under Section 32(3) of the Consumer Affairs Authority Act No 9 of 2003. In that event the complained is time bared as the complaint was not made within one month and should have been rejected in *in limine* by the Consumer Affairs Authority.

The Petitioner further contended that the Consumer Affairs Authority by entertaining the complaint of the 2nd Respondent under Section 13(1)(b) of the Consumer Affairs Authority Act the Authority has acted without jurisdiction.

In support of this contention the Petitioner submitted that only section that deals with implied warranties in relation to the supply of goods including foods and beverages in the consumer Affairs Authority Act is Section 32. The warranties are listed in Section 32(1) & (2) including that the goods supplied will be reasonably fit for the purpose for which they are supplied. Section 32(3) states that "A consumer aggrieved by the breach of an implied warranty as provided for in Subsection (1) and (2) may make a complaint to the Authority in writing against such breach within one month of the supply of goods..."

Section 32 provides as follows:

(1) In every contract for the supply of goods or for the provision of services by any person in the course of a business of supply of such goods or provisions of such services to a consumer, there is an implied warranty that

(a) the services will be provided with due care and skill ;

(b) that any materials supplied in connection with provision of such services will be reasonably fit for the purpose for which they are supplied ;

(c) the goods supplied or services provided will be in conformity, with, the standards and specifications determined under section 12 of this Act ; and

(d) the goods supplied will be reasonably fit for the purpose for which they are supplied.

(2) Where a trader or any person other than a trader supplies any goods or provides any service to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the trader or other person of any particular purpose for which the goods or services are required or the result that he desire the service to achieve, there is an implied warranty that the services provided under the contract for the provision of such services and any materials supplied in connection with those services will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result, except where circumstances show the consumer does not rely, or that it is unreasonable for him to rely, on the trader's or such other person's skill or judgment.

(3) A consumer aggrieved by the breach of an implied warranty as provided for in subsection (1) or (2) may make a complaint to the Authority in writing against such breach within one month of the supply of such goods or the provision of such services as the case may be, or the supply of materials supplied in connection with the provision of those services.

(4) At any inquiry held into a complaint made under subsection (3), the Authority shall give the trader or other person against whom the complaint is made, an opportunity of being heard either in person or by an agent on his behalf.

(5) Where after the inquiry the Authority is of opinion that a breach of an implied warranty has taken place, it shall order the trader or other person to pay compensation to the aggrieved party or refund the amount paid for the supply of such goods or provision of such services as the case may be, and for the supply of any materials in connection with the provision of those services, within such period as shall be specified in the order.

(6) An order under subsection (5) shall be made in writing and communicated to such trader or other person by registered post.

(7) Where a trader or any other person against whom an order is made under subsection (5) fails or refuses to pay such compensation or to refund the amount required to be paid as the case may be, within the period specified in the order, such sum may, on application being made in that behalf by the Authority to the Magistrate's Court having jurisdiction over the place of business or residence of the trader or such other person against whom the order was made, be recovered in like manner as a fine imposed by such court, notwithstanding that such sum may exceed the amount of a fine which that Court may, in the exercise of its ordinary jurisdiction impose.

Section 32 which deals with warranties in relation to the supply of goods or services in its subsection (1) provides that in every **contract** for the supply of goods or for the

provision of services by any person in the course of a business of supply of such goods or provisions of such services to a consumer, there is an implied warranty and the implied warranties are given in the section.

Subsection (2) provides that when a consumer enters in to a contract expressly or by implication, makes known to the trader or other person of any particular purpose for which the goods or services are required or the result that he desire the service to achieve then in those circumstances there is an implied warranty that the services provided under the **contract** for the provision of such services and any materials supplied in connection with those services will be reasonably fit for that purpose.

The above provisions demonstrate that the supply of goods and services that are covered under Section 32 are for the supply of goods or for the provision of services under a **contract**.

The complaint of the 2nd Respondent to the Consumer Affairs Authority does not arise out of supply of goods on a contract between the Petitioner (manufacturer) and the 2nd Respondent (complainant) but a complaint arising out of the sale of 1 ½ litre Lion Club Soda to the 2nd Respondent manufactured by the Petitioner. The complaint is that this Lion Club Soda did not conform to the warranty or guarantee given by implication by the manufacturer to the person who purchase the said soda that the said soda will be reasonably fit for consumption. Therefore this complaint can only be entertained by the Consumer Affairs Authority under Section 13 of the said Act and not under Section 32.

Section 13 provides:

13(1) The Authority may inquire into complaints regarding;

(a) the production, manufacture, supply, storage, transportation or sale of any goods and to the supply of any services which does not conform to the standards and specifications determined under section 12; and

(b) the manufacture or sale of any goods which does not conform to the warranty or guarantee given by implication or otherwise, by the manufacturer or trader.

(2) A complaint under subsection (1) which relates to the sale of any goods or to the provision of any service shall be made to the Authority in writing within three months of the sale of such goods or the provisions of such service, as the case may be.

(3) At any inquiry held in to a complaint under subsection (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.

(4) Where after an inquiry into a complaint, the Authority is of opinion that a manufacture or sale of any goods or the provision of any services has been made which does not conform to the standards or specifications determined or deemed to be determined by the Authority, or that a manufacture or sale has been made of any goods not conforming to any warranty or guarantee given by implication or otherwise by the manufacturer or trader, 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 the provision of such service, as the case may be.

(5) An order under subsection (4) shall be made in writing and be communicated to such manufacturer or trader by registered post.

(6) Where any manufacturer or trader fails or refuses to comply with an order made under subsection (4) of this section, such manufacturer or trader shall be guilty of an offence under this Act, and the sum of money due on the order as compensation or refund may, on application being made in that behalf by the Authority to the Magistrate's Court having jurisdiction over the place of business or residence of such manufacturer or trader as the case may be, be recovered in like manner as a fine imposed by such court, notwithstanding that such sum may exceed the amount of a fine which that court may, in the exercise of its ordinary jurisdiction, impose.

Under subsection (2) of Section 13 a complaint could be made to the Authority in writing within three months of the sale of such goods. By this provision no one can make a complaint to the Authority against a manufacturer of any goods which does not conform to the warranty or guarantee given by implication or otherwise, by the manufacturer unless and until that product is sold. Once such product is sold a consumer could complain within three months from the time of sale of the product against the manufacturer. The legislature in its wisdom has not included the manufacturer of a good in Section 13 subsection (2) as the manufacturer of a good is entitled to detect a defective good after manufacture and could remove it from sale. If a defective good is detected after manufacture of the same it cannot be a cause of complaint of a consumer. The consumer can complain only if the manufacturer

allows a defective good to be sold it to a consumer. That is why the legislature in Section 13(2) imposes a time limit to complaint against a sale of a product which does not conform to the warranty or guaranty given by implication by the manufacturer. It is an admitted fact that the said product (1 ½ litre Lion Club Soda) was manufactured by the Petitioner and was sold from an outlet on 24.01.2004 and the complaint was made against the manufacturer on 11th March 2004 which is within three months from the sale of such goods. Therefore the submission that the Consumer Affairs Authority by entertaining the complaint of the 2nd Respondent under Section 13(1)(b) of the Consumer Affairs Authority Act acted without jurisdiction is untenable.

The Petitioner has also challenged the aforesaid order on the basis that the 2nd Respondent is not entitled for compensation in the circumstances of the case.

Section 13(4) provides:

(4) Where after an inquiry into a complaint, the Authority is of opinion that a manufacture or sale of any goods or the provision of any services has been made which does not conform to the standards or specifications determined or deemed to be determined by the Authority, or that a manufacture or sale has been made of any goods not conforming to any warranty or guarantee given by implication or otherwise by the manufacturer or trader, 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 the provision of such service, as the case may be.

The Petitioner's challenge on the finding of the Authority; that the manufacture of the said product (1 ½ litre Lion Club Soda) is not in conformity to the warranty or guarantee given by implication by the manufacturer, cannot be entertained in this proceedings as this is a judicial review proceedings.

In *Browns Engineering (Pvt) Ltd v Commissioner of Labour and Others* (1998) 1 Sri.L.R 88 Jayasuriya J held:

“Relief by way of certiorari in relation to award of compensation pronounced by the Commissioner of Labour will be available to quash such an award of

compensation only if the Commissioner of Labour wholly or in part assumes a jurisdiction which he does not have or exceeds that which he has or acts contrary to principles of natural Justice or pronounces an award which is eminently unreasonable or irrational or is guilty of a substantial error of law. The remedy by way of certiorari cannot be made use of to correct errors or to substitute a correct order for a wrong order and if the Commissioner's award of compensation was not set-aside in whole or in part it had to be allowed to stand unrevised.

On an appeal the question is right or wrong? On review the question is lawful or unlawful."

The Petitioner has also challenged the award of compensation of Rs 50,000/- to the 2nd Respondent. The Petitioner contended that Black's Law Dictionary 7th Edition at page 277 defines "Compensation" as payment of damages, or any other act that a court orders to be done by a person who has caused injury to another and must therefore make the other whole. In other words "compensation" in section 13(4) is in effect compensatory or actual damages namely an amount awarded to a respondent to compensate for a proven injury or loss. The compensation in Section 13(4) is rescissory or restitution but not punitive in nature and this fact is further strengthened by the other remedies available namely replacing the goods or refunding the amount paid for the goods. I agree with the submissions of the Petitioner that the compensation cannot be considered as punitive. The compensation can be awarded to meet the actual loss. In the order made by the Consumer Affairs Authority dated 24.10.2004 marked X7 the Authority has not given any reason why it has awarded Rs.50,000/- to the complainant the 2nd Respondent. In this circumstances this court quash that part of the order that awarded compensation in a sum of Rs. 50,000/- to the complainant and order the Petitioner to refund the amount paid for such good by the complainant the 2nd Respondent.

The application of the Petitioner is allowed to the above extent without costs.