

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

In the matter of an application for Writ
of Certiorari and Mandamus under and
in terms of Article 140 of the
Constitution.

Eva Ogesta Thisera
By her Attorney
Hewanedungodage Rathnasiri,
Puhugahahena,
Pahala Vitiyala,
Thihagoda.

Petitioner

Court of Appeal Application
No.19/2012(Writ).

Vs.

1. National Transport Commission
No.241, Park Road,
Colombo 05.
And 7 others.

Respondents

BEFORE : S. SRISKANDARAJAH, J (P/CA)
P.W.D.C, JAYATHILAKA, J

COUNSEL : Razik Zarook PC with Rohana Deshapriya and Chanaka Liyanage
for the Petitioner,
Milinda Gunathilake SSC
for the Respondents

Argued on : 08.02.2013

Decided on : 20.03.2013

S.Sriskandarajah, J,

The Petitioner submitted that he is the Power of Attorney holder of the owner of the bus bearing No.WPJX-2357, and the said owner was issued with a permit No.NTC A11098, to operate a Colombo-Matara bus route under the category of minor service. The principal and the Attorney entered into an agreement to transfer the said bus in due course by virtue of the agreement of transfer dated 15th May 2009, prepared by D.P. Mahesha Premuditha, Attorney-at-Law and Notary Public, Matara. The Petitioner further submitted, the said bus was examined when it was in operation on 28th November 2008, 3rd February 2009, 3rd March 2009 and 10th June 2009 by officers of National Transport Commission, and found that no electronically printed tickets were issued and the sticker which indicates the destination was not displayed on the rear windscreen, and the Investigation Officer issued a report for the irregularities in relation to the above instances.

The Petitioner was called for inquiry on different occasions, and he explained that the main reason for not issuing electronically printed tickets was due to constant faults of ticket machines, and he also submitted that the sticker which indicated the destination was not displayed due to the inability of the registered owner to produce the bus to obtain stickers. After the above inquiry, the Petitioner received a letter dated 3rd July 2009 from the National Transport Commission, informing him that the permit issued to the Petitioner for the bus was cancelled due to the irregularities that were detected. The Petitioner appealed against the said decision to the Secretary to the Ministry of Transport on the 3rd of August 2009, and the Secretary to the Ministry of Transport, by his letter dated 9th December 2009, delivered his decision informing him that there is no reason to differ or vary the decision of cancellation of the permit. The Petitioner

submits that the decision taken by the respondents to cancel the said permit issued to the Petitioner to operate the bus bearing No.WPJX-2357 is unreasonable, ultra vires, illegal and null and void for the reason:-

- (a) The said decision was taken by not considering the explanation given by the Petitioner with regard to the offences which clearly explained that the offences committed was due to circumstances beyond his control;
- (b) That the fundamental principle of natural justice and reasonableness and fairness was not followed;
- (c) That the Respondents have failed to give reasons for cancellation as well as the rejection of appeal.

In view of the above facts, the Petitioner has sought a writ of certiorari to quash the decision to cancel the said permit.

It is the position of the Respondents that the Petitioner is not the holder of a passenger permit as he is not the owner of the bus, in terms of Section 23(1) of the National Transport Commission Act, a passenger permit is issued to the registered owner of a bus. According to the agreement, the Petitioner has sold the bus to the Power of Attorney holder. The passenger permit is cancelled by operation of law once the permit holder ceases to be a registered owner of the bus. Section 28 of the National Transport Commission Act provides that the passenger service permit is not transferable, the Petitioner, in violation of the said provision has sold the said permit to the Power of Attorney holder and, therefore, the Petitioner is not entitled to seek a writ of certiorari to quash the cancellation of the said permit. Further, the said bus, when

operating, had violated the conditions of the permit for non-compliance of the requirements that are contained in the said permit. The violations that were committed by the Petitioner were brought to the notice of the Petitioner and they were inquired into and the Petitioner was given an opportunity to explain. The violations that were committed by the Petitioner fall under the category of 'major offences'. The offences that were committed by the Petitioner were: non-issuing of machine tickets or issuing tickets that are not formalized. This offence was committed by the Petitioner on 3 occasions and, after an inquiry, the Petitioner was found guilty for the said offence, and in this background, the Petitioner's permit was cancelled. The Petitioner's appeal to the Secretary to the Ministry of Transport was also considered and rejected. Learned President's Counsel who appeared for the Petitioner could not provide any explanation to this Court for the Petitioner's violation of the said provisions and committing the said offence and, in those circumstances the Respondents are justified in acting under Sections 32 and 33 of the National Transport Commission Act to cancel the permit issued to the Petitioner and, therefore, this Court has no reason to interfere in the decision made by the Respondents and, hence, dismisses this application without cost.

President of the Court of Appeal

P.W.D.C, Jayathilaka J,

I agree,

Judge of the Court of Appeal