

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

In the matter of an application for Mandates in  
The nature of Writs of Certiorari and Prohibition  
In terms of Article 140 of the Constitution.

Frontier Automotive (Pvt) Ltd.,  
488, Nawala Road,  
Koswatta,  
Rajagiriya.

Case No.

CA (writ) Application No.79/2012

**Petitioner**

Vs.

- 1) Consumer Affairs Authority,  
1<sup>st</sup> and 2<sup>nd</sup> Floor,  
CWE Secretariat Building,  
P O Box 1581,  
27, Vauxhall Street,  
Colombo 2.
- 2) Interfreight (Pvt) Ltd.,  
IWS Centre,  
No.451, Kandy Road,  
Kelaniya.
- 3) GFS Frontier (Pvt) Ltd.,  
271, Galle Road,  
Colombo 3.

**Respondents**

BEFORE : S. SRISKANDARAJAH, J (P/CA)  
W.M.M.MALINIE GUNARATNE, J

COUNSEL : S.L.Gunasekera with M.E.Wickramasinghe,  
for the Petitioner  
A.H.M.D.Nawaz DSG,  
for the 1<sup>st</sup> Respondent  
  
Romesh de Silva PC with Sugath Caldera,  
  
for the 2<sup>nd</sup> Respondent

Supported on : 11.07.2013

Order on : 16.07.2013

***S.Sriskandarajah,J***

The learned Counsel for the Petitioner, in supporting this Application, submitted that the Petitioner Company has been engaged in the business of selling and/or manufacturing and/or assembling motor vehicles by the 3<sup>rd</sup> Respondent, which is an associate company of the Petitioner, and the Petitioner Company, on or about 3<sup>rd</sup> of June 2009, sold and delivered to the 2<sup>nd</sup> Respondent a Land Rover Jeep, assembled by the 3<sup>rd</sup> Respondent for a sum of Rs.9.5M. The Petitioner also admitted that it is the obligation of the seller of a motor vehicle, in terms of any contract of sale, to cause the said vehicle to be registered by the Registrar of Motor Vehicles.

The Petitioner admitted that it was unable to cause the registration of several Land Rover vehicles, including that was sold to the 2<sup>nd</sup> Respondent, because of a policy adopted by the Registrar of Motor Vehicles, not to register such vehicles. Despite the knowledge that the Petitioner had in relation to the said registration, the Petitioner, when selling the said motor vehicle to the 2<sup>nd</sup> Respondent, had given a letter of warranty and guarantee, in that letter, he had given 3 years warranty to the said vehicle and also had guaranteed that it would be registered with the Registrar of Motor Vehicles. The said document was not filed with this

application, and the said document was brought to the notice of Court by the 1<sup>st</sup> Respondent. It is a serious suppression of fact to this Court that while the Petitioners were aware that this vehicle cannot be registered in the Registrar of Motor Vehicles due to a policy adopted by the Registrar of Motor Vehicles, the Petitioner has given a guarantee that he will get the vehicle registered in the Registrar of Motor Vehicles and sold the vehicle to the 2<sup>nd</sup> Respondent.

As the said vehicle was not registered as guaranteed by the Petitioner, the 2<sup>nd</sup> Respondent complained to the 1<sup>st</sup> Respondent authority, the Consumer Affairs Authority, and the Consumer Affairs Authority commenced an inquiry into this matter. The Petitioner submitted to Court that the Consumer Affairs Authority has no jurisdiction to inquire into this matter under Section 13(1)(b), for the reason that the complaint to the Consumer Affairs Authority should be made within 3 months of the sale of the goods.

The above submission has no merit in relation to goods that has warrantee or guarantee, and it has been constantly held by this Court that when there is a warrantee or a guarantee, the complaint could be made within 3 months after the expiration of the said warrantee or guarantee: *David Pieris Motor Company Limited v Consumer Affairs Authority, C.A/WRIT/App/No. 635/2007, CA minute 03.08.2009, Aqua Technologies (Private) Limited v Consumer Affairs Authority, C.A. (Writ) Application No.1068/2007 CA minutes 21.09.2012*. In this instant case the 2<sup>nd</sup> Respondent has made a complaint within the period of guarantee and, therefore, the Consumer Affairs Authority has jurisdiction to inquire into this matter. The Consumer Affairs Authority has given a fair hearing to the Petitioner and the 2<sup>nd</sup> Respondent and in the course of the hearing, the Petitioner has suggested that he will refund the money to the value of the vehicle and the vehicle should be valued by an independent valuer. On his request a valuation was done, and the valuation was above the sale price of the said vehicle and, therefore, the Consumer Affairs Authority has directed the Petitioner to pay the sale price of the vehicle in return of the said vehicle. In these circumstances the Consumer Affairs Authority has acted fairly and within its jurisdiction.

Considering the facts stated above, viz., that the Petitioner has suppressed the warrantee documents from this Court and it is a material document that has to be considered in this

Application, and considering the merit of this Application, the Petitioner has not established a prima facie case for this Court to issue notice. In these circumstances this Court refuses to issue notice on the Respondents.

President of the Court of Appeal

**W.M.M.Malinie Gunaratne, J**

I agree,

Judge of the Court of Appeal