

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

**In the matter of an Application for a mandate in the
nature of *Writ of Certiorari, Prohibition and
Mandamus* under article 140 of the Constitution of
the Democratic Socialist Republic of Sri Lanka**

1. Vehicles Lanka (Private) Limited,
No. 43, Katana Rd,
Thimbirigaskatuwa,
Negombo.

2. Handun Harsha Prabath De Silva,
Chairman/ Managing Director,
Vehicles Lanka (Private) Limited,
No. 43, Katana Rd,
Thimbirigaskatuwa,
Negombo.

PETITIONERS

CA/WRIT/446/2014

Vs,

1. Jagath Premalal Wijeweera,
Director General of Customs,
Customer House,
Colombo 01.

And 94 others

RESPONDENTS

**Before: Vijith K. Malalgoda PC J (P/CA) &
H.C.J. Madawala J**

Counsel: Faisz Musthapha PC with Ashiq Hassim and Maheshika Wijethunge

for the Petitioners

Arjuna Obesekara DSG and Nayomi Kahatawita SC for Respondents

Supported On: 17.06.2015

Written Submission On: 17.07.2015, 23.09.2015

Order on: 12.02.2016

Order

Vijith K. Malalgoda PC J

The Petitioners, Vehicles Lanka (Pvt) Limited and Handun Harsha Prabath de Silva, Chairman/Managing Director of the 1st Petitioner above named had come before this court seeking inter alia,

b). call for and inspect the entire record pertaining to the subject matter of this application

Issue prerogative writs in the nature of,

c). Writ of *Certiorari* quashing the directive issued to the 1st Respondent, as contained in the letter dated 28.02.2013 (P-70)

d). Writ of *Certiorari*, quashing the decision of the Cabinet of Ministers dated 28.02.2013, (contained in and/or referred to in the letter dated 28.02.2013 addressed by the 3rd Respondent to the 1st Respondent), which decision purports to direct the said 1st Respondent to suspend with immediate effect, the clearance of related imports by the Petitioners in case No. SC (FR) 304/2011, pending the decision of the review of the related judgment by the Supreme Court.

- e). Writ of *Prohibition* restraining the 1st Respondent from refusing to pass any goods which the 1st Petitioner imports to Sri Lanka, save and except in the circumstances set out in section 144 of the Customs Ordinance,
- f). Writ of *Mandamus* directing the 1st Respondent and 2nd Respondent to pass according to law any goods which the said 1st Petitioner imports into Sri Lanka,
- g). Writ of *Mandamus* directing the 1st Respondent to take such steps mandated by law for the purpose of recommending the waiver of demurrage charged by the Sri Lanka Ports Authority from the 1st Petitioner in respect of the consignments that are currently being held up at the Port of Colombo,
- h). Writ of *Mandamus* directing the 1st and 2nd Respondents to process the documents of the 1st Petitioner Company relating to the said consignments to which the Customs Declarations bearing No I 28327, I 28336, I 28346 relate and examine and deliver such goods to the 1st Petitioner Company according to law,

Issue interim orders.

- i). directing the 1ST Respondent to release the said consignments to the 1st Petitioner Company pending the final determination of this application, without payment of demurrage and/or upon such other conditions as Your Lordships may consider fit and proper,
- j). staying the operation of the said directive issued to the 1st Respondent, as contained in the letter dated 28.02.2013 (P-70) until the final determination of this application,
- k). restraining the 1st Respondent from refusing to pass any other goods/ consignments that may be imported by the Petitioners in the future, other than in terms of section 144, pending the final determination of this application, subject to any terms conditions as to Your Lordship's Court shall sees fit,

1). restraining the 1st Respondent from refusing to release to the Petitioners the goods/ consignments imports by the Petitioners (more fully referred to in Paragraph 97 and 106 above), subject to any terms and conditions as to Your Lordship's Court shall see fit,

when the application was supported before this court, the Learned Deputy Solicitor General who represented the Respondents, raised a preliminary objection for the maintainability of the present application on the basis, that the subject matter of this application has already been determined by the order made by this court in CA/Writ Application 57/2013, which order has been affirmed by the Supreme Court in Supreme Court Special Leave to Appeal Application No. 76/2013 and in the said circumstances the Petitioners are estopped from seeking the same relief once more from this court.

In the course of the arguments with regard to the said preliminary objection, references were made by both parties to several applications concluded either in the Court of Appeal or in the Supreme Court.

Since the outcomes of those cases are relevant for the decision of this case I will first deal with those applications.

Petitioners had filed SC (FR) 304/2011 before the Supreme Court complaining that the decision of the Cabinet of Ministers denying registration under section 241 of the Motor Traffic Act for the 1st Petitioner to carry out its business was arbitrary and in violation of its fundamental rights and that the 1st Petitioner has a legitimate expectation that the vehicles assembled by it would be registered in terms of the said Act.

The said application pending before the Supreme Court was settled on 13.09.2012 between the Petitioner and the 2nd and the 64th Respondents to the said application on the following terms.

“The 2nd Respondent has no objection in permitting the Commissioner General of Motor Traffic to register the business of Vehicle Lanka (Private) Limited in terms of the Motor Traffic Act.

The 2nd Respondent is to direct the Commissioner of Motor Traffic to Register 2250 vehicles including the vehicles that have remained unsold with the company at the commencement of this agreement and which are assembled within 3 years thereafter by the 1st Petitioner using 'used parts'.

The 64th Respondent could grant approval to the 1st Petitioner Company to register its business of assembling vehicles using 'used parts' in terms of section 241 of the Motor Traffic Act.”

Subsequent to the said settlement, the Petitioner obtained an import license, from the Controller of Imports and Export to import a consignment of 750 units of vehicle bodies per year for 3 years totaling 2250 vehicle bodies. Pursuant to the said license being obtained, the 1st Petitioner had imported a consignment of 3 containers in terms of the said license.

Custom declarations bearing numbers I 28327, I 28336 and I 28346 had been lodged at the customs on 28.02.2013 seeking to clear the said 3 containers and Sri Lanka Customs had refused the clearance of the said containers.

Being aggrieved by the said refusal, the Petitioners had filed CA/Writ /57/2013 before the Court of Appeal seeking inter alia,

- b). Call for and inspect the entire record pertaining to the subject matter of this application, including the decision of the Cabinet of Ministers taken at its meeting held on 28.02.2013 with regard to assembling of vehicles for the local market,

Issue prerogative writs in the nature of,

- c). Writ of *Certiorari*, quashing the decision of the Cabinet of Ministers dated 28.02.2013 (contained in and/or referred to in the letter dated 28.02.2013 addressed by the 3rd Respondent

to the 1st Respondent), which decision purports to direct the said 1st Respondent to suspend with immediate effect, the clearance of related imports by the Petitioners in case No. SC (FR) 304/2011, pending the decision of the review of the related judgment by the Supreme Court,

- d). Writ of *Prohibition* restraining the 1st Respondent from refusing to pass any goods which the 1st Petitioner imports to Sri Lanka save and except in the circumstances set out in section 144 of the Customs Ordinance,
- e). Writ of *Mandamus* directing the 1st Respondent and 2nd Respondent to pass according to law any goods which the said 1st Petitioner imports into Sri Lanka,
- f). Writ of *Mandamus* directing the 1st and 2nd Respondents to process the documents of the 1st Petitioner Company relating to the said consignments to which the Customs Declarations bearing No. I 28327, I28336 and I 28346 relate and examine and deliver such goods to the 1st Petitioner Company according to law,

Issue interim orders,

- g). Directing the 1st Respondent to release the said consignments to the 1st Petitioner company pending the final determination of this application, upon such conditions as Your Lordships may consider fit and proper,
- h). Staying the operation of the said directive issued to the 1st Respondent, as contained in the letter dated 28.02.2013 (P-70) until the final determination of this application,
- i). Retraining the 1st Respondent from refusing to pass any other goods/ consignments that may be imported by the Petitioners in the future, other than in terms of section 144, pending the final determination of this application, subject to any terms and conditions Your Lordship's Court shall seem fit.

When this application was taken up for support on 14.03.2013 before the then President of the Court of Appeal, the court after considering the material placed before court by the Petitioners as well as by the Respondents made the following order,

“The Petitioner after obtaining the said order from the Supreme Court had made an application to the Controller of Imports and Exports on 10.10.2012 and had made representation in his letter ‘the Supreme Court in the order dated 13.09.2012 in respect of Case No. SC (FR) 304/2011 has ruled that our Company be permitted to register 2250 vehicles which must be assembled within 3 years and it naturally follows that the vehicle components required for assembling such vehicles must permitted.’ By this representation, he has got a license to import vehicle parts to assemble 2250 vehicles which is also reflected in the Petitioners petition paragraph 93.

Where the Petitioners by the said settlement were in fact permitted to register 2250 vehicles inclusive of the vehicles already assembled (400 vehicles). Therefore the Petitioner is not entitled to import 2250 vehicle parts in terms of the said settlement in SC (FR) 304/2011 and hence the Petitioner has misrepresented facts to the Controller of Import and Exports and has got the said license for importation of 2250 vehicle body parts.

The consignment that was the subject matter of this application was imported under the said license. As the Petitioner has not come to this Court with clean hands this Court declines to issue notice on the Respondents.”

From the above order it is clear that the court after giving due consideration to the documents placed before court including the Petitioners’ application for the said import license had declined to issue notices on the Respondents.

In the said order the court had never concluded that the Petitioners have suppressed or misrepresented material facts before the said court but instead concluded that the Petitioners have not come before court with clean hands for the reason that, the purported importation was based on an Import License obtained by the 1st Petitioner by misrepresenting the facts to the controller of Imports and Exports.

However being aggrieved by this order the Petitioners sought Special Leave to Appeal to the Supreme Court under SC (Special) LA 76/2013, but the Supreme Court refused to grant Special Leave to Appeal and dismissed the said application.

It was brought to the notice of this court of another application filed by the Petitioner with the case number CA/Writ/218/2013 prior to filing the present application but, this case was never supported for notices and was withdrawn by the Petitioners on 17.07. 2014

Thereafter the petitioners have filed the present application before this court on 30. 12. 2014.

Even though the Petitioners submitted that the relief claimed in the present application are different to the relief claimed in application 57/2013, on perusal of the averments and the relief claimed, which are reproduced in this order, this court observes that the two applications are almost similar and the final relief claimed by the Petitioners are almost the same.

In support of their contention, Petitioner relied on the decision in *Alponso Appuhamy V. Hettiarachchi (1993) 77 NLR 131* where Pathirana J had cited with approval the dicta of Lord Cozens- Hardy to the effect,

“that is to say he would not decide upon the merits, but said that if an applicant does not act with *uberima fides* and put every material fact before the court, it will not grant him an injunction even though there might be facts upon which the injunctions might be granted but that he must come again on a fresh application.”

However I see no relevance of the above dicta to the present case. As I have already discussed in this judgment, in Writ Application 57/2013 the notices were refused not for suppression or misrepresentation of material facts before Court of Appeal but, for the Petitioners failure to come before this court in Clean Hands, since the court has observed that the Petitioners had obtained the Import License by misrepresenting facts before the Controller of Imports and Exports.

In the said decision in CA/Writ /57/2013 court had concluded, when refusing notices that the goods sought to be released were imported on a license obtained by providing false information. Subsequent decision by the Supreme Court by refusing Special Leave to Appeal had confirmed the said decision of the Court of Appeal.

Therefore I am of the view that the decision in CA/Writ/ 57/2013 is a final and conclusive decision, when the said decision is considered with the facts of the present's case. In a prerogative writ this court is not inclined to re consider the same issues which were considered once by this court. It is trite law that there needs to be finality to litigation and therefore parties estopped from bringing multiple suits on the same issue resulting in over burdening the court. Therefore this court is not inclined to issue notices on the Respondents as moved by the Petitioners.

Notices refused

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala J

I agree,

JUDGE OF THE COURT OF APPEAL