

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

In the matter of an application for Writs of
Certiorari and Prohibition under and in
terms of Article 140 of the Constitution of
the Democratic Republic of Sri Lanka.

Diesel and Motor Engineering PLC,
65, Jethawana Road,
Colombo- 12.

Petitioner

Court of Appeal case

No. CA 43/2016 Writ

Vs.

Consumer Affairs Authority of Sri Lanka,
Level 1 and 2, CWE Secretariat Building,
No.27, Vauxhall Street,
Colombo 02.

W.P. Sumanawathie,
No. 417/2, Near Bokotuwa,
Ethpitiya,
Walasmulla.

Respondents

Before : L.T.B. Dehideniya J, (P/CA)

&

A.L. Shiran Gooneratne J.

Counsel : Thishya Weragoda, Iresh Seneviratne with C. Sugathapala for the
Petitioner.

Chaya Sri Nammuni SC for Respondents.

Supported on : 17/10/2017

Decided on : 25/10/2017

Order

A.L. Shiran Gooneratne J.

Heard both Counsel.

The Petitioner submits that a “TATA ACE” mini lorry was provided to the 2nd Respondent on or about the 30th March 2012, subject to a “new vehicle limited warranty” of 1 year or 36,000 km, whichever came first, in relation to certain manufacturing defects. On several occasions the 2nd Respondent had brought the said motor vehicle to the service center of the Petitioner at Matara, complaining of various issues, where the Petitioner has attended to such concerns.

On or about 14th March 2013, the Petitioner received a letter from the 1st Respondent regarding a complaint lodged by the 2nd Respondent for alleged defects in the said vehicle and requested the Petitioner to be present for an inquiry. Since there was no settlement reached, the matter was fixed for inquiry in terms of Section 13(1) of the Consumer Authority Act No. 9 of 2003. At the said inquiry a settlement was reached between the parties. However the 2nd Respondent had withdrawn from the settlement due to a disagreement of the conditions of settlement. The proceedings of the inquiry held by the 1st Respondent on 9th July 2013, is attached marked A11.

Thereafter the Petitioner has received documents marked A13(a) and A13(b) in relation to order dated 29th May 2014, in terms of Section 13(4) of the said Act, signed by the Chairman of the 1st Respondent Authority, requiring the

Petitioner to pay a sum of Rs. 703,794/- to the 2nd Respondent. According to document marked A13(b), the said order by the 1st Respondent was given taking into consideration the oral and written evidence which the parties had placed before the said inquiry, held in terms of Section 13(1) of the Act.

The Petitioner submits that when an inquiry has commenced in terms of Section 13(1), of the Act, and where the parties arrive at a settlement, the same inquiry cannot recommence, as the Inquiry Panel of the 1st Respondent is *functus*. By letter dated 3rd September 2013, marked A12, the Petitioner has informed the 1st Respondent regarding the non effectuation of the settlement arrived between the parties. The 1st Respondent has not replied this letter. However after a lapse of nearly a year, the Petitioner received order marked 13(a) by the 1st Respondent in terms of Section 13(1) of the said Act.

Section 13(4) of the Act states,

“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.”

It is observed that the parties before the Panel of Inquiry have not consented to adopt the proceedings previously recorded and also have not consented before the said Panel of Inquiry to make an order on the basis of the said proceedings. Therefore the settlement reached between the parties on 9th July 2013, cannot be considered as an order in terms of Section 13(4) of the said Act.

To recommence an inquiry after a lapse of 1 year, without notice to the parties, will necessarily deprive the legitimate expectations of a party to be heard.

In the circumstances the Petitioner has established that, if an interim order to stay further proceedings in the Magistrate’s Court of Colombo is not granted the final order would be rendered nugatory. Therefore relief prayed for in prayer (e) is granted.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya J, (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL