

**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  
under and in terms of Article 140 of the  
Democratic Socialist Republic of Sri Lanka.

CA Writ Application 256/2015

David Pieris Motor Company Limited,  
75, Hyde Park Corner,  
Colombo 02

**Petitioner**

Vs

Consumer Affairs Authority,  
CWE Secretariat Building,  
27, Vauxhall Street, 966,  
Colombo 2  
& 5 others

**Respondents**

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

**Counsel** : Suren Fernando with K. Wickramanayake for the Petitioner  
: M. Jayasinghe SC for the Respondent.

**Argued on** : 28.07.2017

**Written submissions filed on** 19.09.2017

**Decided on** : 26.10.2017

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

This is an application filed by the Petitioner Company seeking for a Mandate in the nature of Writ of Certiorari to quash the order of the 1st Respondent and for a Writ of Prohibition to prevent the Respondents from acting in furtherance of the order sought to be quashed. The facts of this case are briefly as follows. The 5th Respondent has purchased a motor bicycle from the Ratnapura branch of the Petitioner company on 14/12/2009. After two days, i.e. on 16/12/2009, the bicycle could not be started and after reporting, an agent from the company came and inspected the vehicle and the CDI unit was changed and thereafter the bicycle was working properly for a few days. Again on 18/12/2009 the vehicle could not be started and it had been repaired by the Petitioner's agent at Ratnapura. Again on 20/12 the vehicle became defective and an agent came and certain wires were corrected and was able to start the vehicle.

The 5th Respondent was not satisfied with the vehicle because it broke down three times within six days. Thereafter the he complained to the 1st Respondent: the Consumer Affairs Authority. After a protracted inquiry, the 1st Respondent made an order on 14/5/2015 marked P47, ordering the Petitioner to pay the back the cost of the bicycle to the 5th Respondent.

The Petitioner's contention is that the CDI unit which was changed by the Petitioner isn't covered by the warranty. Further they submitted that the 5th Respondent has tampered with the wiring system and the reason for not starting the vehicle on another occasion is due to loose connection of the wires. Further they say that vehicle was in custody of the 5th Respondent throughout the period and the Petitioner was not

allowed to inspect the vehicle until it was inspected before the 1st Respondent on 05/01/2011.

The Petitioner challenged the validity of the order of the 1st Respondent on several grounds. One of the grounds argued by the Petitioner is that at the inspection carried out on the 05/01/2011, in the presence of the 1st Respondent and 5th Respondent, the motor cycle was working in good condition and therefore the inquiry should have been concluded at that stage. It was found that the 5th Respondent has not used the motor cycle for a long time and therefore the carburetor was clogged and the battery was dead. After replacing the carburetor and the battery they were able to start the motor cycle. Since there was no insurance to the motor cycle, they could not do a test run on a highway but they had done a test run on a foot path and found that the motor cycle is in good working condition. In the report marked P19 the officers who were representing the 1st Respondent has been certified that they have not observed any defect in the motor cycle.

The 5th Respondent has not agreed to accept the motor cycle because he was suspicious of the condition of the vehicle. Thereafter the 1st Respondent had referred this motor cycle to the technical division of the Colombo University for an inspection and to report. After receiving the report, the 1st Respondent had made the impugned order marked P47. The Petitioner's other objection is that the 1st Respondent failed to follow the rules of natural justice. The Petitioner submits that the report sent by the Colombo University was not given even after requesting for a copy and was not awarded the opportunity of cross-examining the author of the report. Further the Petitioner submits that he was denied the opportunity of presenting evidence to count the said report. Therefore, the Petitioner argues that it is a violation of the rules of natural justice.

The Petitioners further submit that in the report, the author has come to the conclusion that there is a manufacturing defect in the wiring system. Therefore the Petitioner's contention is that he should have given an opportunity to question the author as to how he came to that conclusion. The 1st Respondent, in his order marked P46, has taken into consideration the report submitted by the technical division of the Colombo University.

The Consumer Affairs Authority has the power to inquire to a complaint made by a consumer under Section 13 of the Consumer Protection Act. An inquiry of this nature has to be conducted in fairness to all parties, following the rules of natural justice. The Consumer Affairs Authority is not expected to make any determination to satisfy only the customers. It has to make an independent decision according to the facts presented to it.

On 05/01/2011 in the presence of the officers of the 1st Respondent, the Petitioner had established that the motor cycle was working in good condition. There was a difficulty to start the motor cycle due to not using it for a long time. After attending to necessary maintenance, they were able to start and run the vehicle. The inquiry proceeded from that point onwards just because the 5th Respondent didn't agree to accept the motor cycle. Once it is established that the item sold is working in good condition there is no reason for the authority to proceed further with the inquiry.

The 1st Respondent accepted the report issued by the Colombo University without offering the Petitioner an opportunity to attack the credibility of the report or the expertise of the author of the report.

The Petitioner has requested for a copy of the report submitted by the Colombo University from the 1<sup>st</sup> Respondent but the document

marked P45, the proceedings of the inquiry dated 19.08.2014, bear witness to the fact that the 1<sup>st</sup> Respondent arbitrarily refused to issue a copy. Under section 13 (1), (3) and (4) of the Consumer Affairs Authority Act the 1<sup>st</sup> Respondent can make an order only after an inquiry.

The 1<sup>st</sup> Respondent, being an administrative body with quasi judicial power, formulated by a statute to inquire in to the disputes in relating to consumer affairs, is duty bound to hold the inquiry fairly and reasonably. It has been held in the case of Shell Gas Lanka Ltd. vs. Consumer Affairs Authority and another [2008] 1 Sri L R 128 at 134 that;

*The duty of the court is to see that power shall not be exercised in unlawful and arbitrary manner, when exercise of such powers affects the basic rights of individuals. The courts should be alert to see that such powers conferred by the statute are not exceeded or abused.*

Wade and Forsyth in Administrative Law 9th Edition at page 966 says that;

*A statutory inquiry is a formalized version of the fair hearing which is required by the common law according to the principles of natural justice. It does not displace natural justice. It should be regarded rather as a framework within which natural justice can operate and supply missing details. The common law's presumption that Parliament intends power to be exercised fairly is all the stronger where Parliament itself has provided for a hearing. Natural justice has in fact been applied in a long series of cases to the whole procedure of a public inquiry, comprising the inspector's function alike. The principle of these cases was that the law could not be content with seeing merely that the form of the statutory procedure had been followed. The same applies to the statutory*

*rules of procedure which have been made for many inquires, as explained later.*

The learned Counsel for the Petitioner cited a series of case such as Nesle Lanka Ltd v. Consumer Affairs Authority and another [2005] 2 Sri L R 138, Gregory Fernando v. Stanly Perera [2004] 1 Sri L R 346, Mahindapala and Others v. Minister of Land Development and others [2009] 2 Sri L R 324 where it has been emphasized that the inquiry needs to be held fairly and following the rules of natural justice.

In the present case the 1<sup>st</sup> Respondent had relied on a report tendered by the Colombo University. In fact in the order marked P47, the 1<sup>st</sup> Respondent had stated that the Colombo University had found that there is a manufacturing defect in the vehicle and the 1<sup>st</sup> Respondent relied on the findings of the University, but the Petitioner was denied the opportunity to contradict or counter the said report. It is a violation of natural justice.

Another factor that has to be considered is that according to the warranty given by the Petitioner, the electric system was not covered. The clause 3 of P48 is that *“the repair or replacement of parts shall not include the repair and/or replacement of ..... any electric items ....”* As per paragraph no. 2 of 1 R 1, the self starting system was not functioning even at the time of purchasing but the Petitioner knowing it, proceeded to purchase the motor bicycle.

As I pointed out earlier, the Petitioner had established that the vehicle is in working condition in the presence of the officers of the 1<sup>st</sup> Respondent Authority but still the 1<sup>st</sup> Respondent continued with the inquiry, and relying on a report, where the Petitioner was not awarded the opportunity to test the expertise of the author; decided against the Petitioner. The Court cannot allow to stand such an order because it is arbitrary, illegal and against the accepted norms of natural justice.

Unser these circumstances, I issue writs as prayed for in paragraph (d), (e) and (f) of the prayer of the petition.

Application allowed.

No costs.

President of the Court of Appeal