

IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an appeal to Court of
Appeal under Article 154 P (6) read with
Article 138 of the Constitution against a
judgment of Provincial High Court
exercising its writ jurisdiction.

C A (PHC) / 135 / 2006

Provincial High Court of

Southern Province (Matara)

Case No. Writ 118 / 2004

Polwatta Keerthi Sarathchandra

Ranaweera,

Salpura,

No 05,

Maha Veediya,

Akuressa.

4TH RESPONDENT - APPELLANT

-Vs-

1. Yaman Sapuge Jagath,

No 192 A,

Hakmana Road,

Thudawa,

Matara.

2. Sanath Indrajith Vitharana,

No 4/12,

Sumanasara Mawatha,

Welegoda,

Matara.

3. Jinadasa Rubasinghe,

Chandana Cafe,

Radawela,

Hakmana.

4. Pasdun Korale Arachchige Kamala,

Madhura Engineering Works,

Matara Road,

Kamburupitiya.

5. Yaman Sapuge Isurusena,

Isuru Niwasa,

Komangoda,

Thihagoda.

6. Samarasekera Vidana Pathirana Renuka

Priyantha Kumara,

'Samara'

Narandeniya,
Kamburupitiya.

7. Walliwala Gamage Jagath,
"Arunananda",
Kamburupitiya Road,
Thihagoda.

8. Lokuarachchige Premasiri,
'Sasika Niwasa',
Arambawatta,
Denipitiya.

9. Manachchige Chandrasena,
Pitamakandahena,
Seenipella,
Mulatiyana.

10. Warnakula Anura,

Lanka Sevana,
Mapalana,
Kamburupitiya.

11. Premadasa Warnabaranage Pathinayake
Sagarika Tire House,
Kamburupitiya.

12. Milan Ratnayake,
Samanala,
Thihagoda.

PETITIONER - RESPONDENTS

1. Southern Province Passenger Transport
Authority,
No 01,
1st Floor,
Wakwella Road,
Galle.

2. Chairman,

Southern Province Passenger Transport

Authority,

No 01,

1st Floor,

Wakwella Road,

Galle.

3. Director General,

Province Passenger Southern Transport

Authority,

No 01,

1st Floor,

Wakwella Road,

Galle.

RESPONDENTS - RESPONDENTS

Before: P. Padman Surasena J (P / C A)

K K Wickremasinghe J

Counsel; Rohan Sahabandu PC with Sarath Walgama for the 4th
Respondent - Appellant.

Chathura Galhena with Manoja Gunawardana for the Petitioner -
Respondents.

Uditha Egalahewa PC with D Karunarathna for the 1st to 3rd
Respondents.

Decided on : 2018 - 03 - 20

JUDGMENT

P Padman Surasena J

Learned counsel for all the Parties when this case came up on 2017-11-28 before us, agreed to have this case disposed of by way of written submissions, dispensing with their necessity of making oral submissions. Therefore, this judgment is based on the material that has been adduced by parties in their pleadings and the written submissions.

The Petitioner - Respondents had filed an application in the Provincial High Court of the Sothern Province holden at Matara praying for a writ of Certiorari to quash the the passenger transportr permit given to the 4th Respondent - Appellant (hereinafter sometimes referred to as the Appellant).

On the date of the argument learned counsel for both parties conceded that the subject matter around which the relevant writ application before the Provincial High Court has revolved, is the route permit bearing No. 002755. The said route permit had been issued by the 1st Respondent - Respondent on 2004-07-21 for a period of one year and the said period had lapsed on 2005-07-21. It is therefore clear that the said permit had lapsed even before the writ of certiorari was issued by the Provincial High Court on 2006-05-08. In the light of the above situation, it is obvious that any exercise of power by Court on the merits of this case would only be academic. It is clear that neither party would benefit from any such exercise.

Learned State Counsel has drawn the attention of this Court to several authorities where the Court had refused to exercise its discretion when the granting of the writ has become futile. It would suffice for this Court to

refer only to the following case although all the cases cited by the learned State Counsel in his written submission are self explanatory.

In the case of Don Shelton Hettiarachchi Vs Sri Lanka Ports Authority and others¹ it was brought to the notice of the Supreme Court that both the Petitioner and 5th Respondent in that case had retired from service during the pendency of the relevant application and that it was futile for the Petitioner to proceed with that application. It would be in place to quote the following paragraph from the judgment of Her Ladyship Justice Shirani Bandaranayake.

"..... learned President's Counsel for the respondents brought to our notice at the time of hearing, which was admitted by the petitioner, that both the petitioner and the 5th respondent had retired from the 1st respondent authority during the pendency of this application and there it was futile for the petitioner to proceed with this application.

Perusing an exercise in futility, could only serve an academic purpose and as quite correctly pronounced by Abrahams CJ 'this is a Court of justice and

¹ 2007 2 SLR 307

not an academy of law'. (Velupillai Vs The Chairman, Urban District Council Secretary²). ... "

The Appellant has not adduced any special reason as to why he wishes to pursue this appeal despite its futility.

In the light of the above, this Court is not inclined to go into the merits of this appeal.

In these circumstances, this Court proceeds to dismiss this appeal without costs.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL

² 39 N L R 464.