

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

CA (Writ Application) No. 425/2017

S.K.Osman Pathamasiri
Rest House of Weligama,
Weligama.

Petitioner

Vs.

1. Lanka Rest Houses Limited.
2. Mrs. S Bogahawatte,
Chairman, Lanka Rest Houses Ltd.
3. S.S.P Ratnayake,
Director, Lanka Rest Houses Ltd.
4. S. Sri Chandran
Director, Lanka Rest Houses Ltd.
5. Pujitha Dilusha Hewawasam
Director, Lanka Rest Houses Ltd.
6. D Venkateshwaran,
Director, Lanka Rest Houses Ltd.
7. BKR Balasooriya
Director, Lanka Rest Houses Ltd.

All of Ministry of Megapolis and Western Development,
Ground Floor, "Sethsiripaya",
Sri Jayawardenapura, Kotte,
Battaramulla.

8. Urban Development Authority,
Ground Floor, 'Sethsiripaya',
Sri Jayawardenapura,
Kotte, Battaramulla.
9. Chairman,
Urban Development Authority,
Ground Floor, 'Sethsiripaya',
Sri Jayawardenapura,
Kotte, Battaramulla.
10. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp, Colombo 12.

Respondents

Before: P. Padman Surasena, J/ President, Court of Appeal
Arjuna Obeyesekere, J

Counsel: Dr. Sunil Cooray with Ms. Sudharshinie Cooray for the
Petitioners

Ms. Nayomi Kahawita, State Counsel for the Respondents

Supported on: 15th May 2018

Decided on: 24th May 2018

Arjuna Obeyesekere, J

The Petitioner filed this application on 11th December 2017. The Petitioner has subsequently filed an amended petition dated 05th February 2018 and a further amended petition dated 18th March 2018, seeking, inter alia, the following relief:

- (a) A Writ of Certiorari quashing the letter dated 06th November 2017, marked as '**P16**';
- (b) A Writ of Certiorari quashing the letter dated 12th March 2018, marked as '**P16(i)**';
- (c) A Writ of Mandamus on the 1st – 9th Respondents to issue the Petitioner a fresh management agreement in respect of the Weligama Rest House or in the alternative to grant the Petitioner a long term permit to manage the said Rest House;
- (d) A stay order staying the operation of the documents marked '**P16**' and '**P16(i)**' until the final determination of this application.

When this application was taken up for support on 15th May 2018, the learned Counsel for the Petitioner submitted that he would restrict his relief to the two Writs of Certiorari and the interim relief.

The Petitioner had entered into an agreement with the 8th Respondent, the Urban Development Authority (UDA) to manage and operate the Weligama Rest House for a period of 5 years from 01st June 1998 to 31st

May 2003. The parties had entered into a further agreement on 25th February 2004 by which the Petitioner was appointed to manage and operate the said rest house from 01st January 2004 to 01st February 2009. The above agreements have been produced with the petition, marked 'P1b' and 'P1c', respectively.

By letter dated 21st September 2009 produced with the petition marked 'P4a', the Petitioner had expressed his willingness to continue the management of the said rest house and sought an extension of the management agreement. In the said letter 'P4a', the Petitioner had set out his development proposal for the said rest house for the period 02nd January 2010 to 03rd January 2013. This included the construction of six new rooms at a cost of Rs. 2 million and other improvements totaling a sum of Rs. 5 million. By letter dated 14th October 2009 produced with the petition marked as 'P4b', the Chairman of UDA Rest Houses Ltd had conveyed to the Petitioner its consent to extend the management period by 8 years, on the condition, *inter alia*, that the repair works mentioned in 'P4a' shall be completed within 4 years from the date of the agreement.

Accordingly, the Petitioner had entered into an agreement with the Urban Development Authority Rest Houses Limited on 12th November 2009, produced with the petition marked 'P3', to manage and operate the said rest house for a period of 8 years from 12th November 2009 until 11th November 2017. The Petitioner had also been granted Permit No. 0018 dated 12th November 2009 to occupy and maintain the said rest house for the aforementioned period. This permit forms part of the documents tendered to this Court marked 'P3'.

Clauses 7 and 8 of the agreement 'P3' required the Petitioner to invest a sum not less than Rs. 5 million to re-develop and re-furbish the rest house and to conclude the construction works within four years of the date of execution of the agreement 'P3'. In the event of early termination of the agreement 'P3', the Petitioner was entitled to the payment of compensation for the improvements carried out, in proportion to the un-expired term. Clause 25 of the agreement 'P3' specified that, *"after the expiration of 8 years management period, consideration will be given to extend the further management period of 8-10 years"*.

By letter dated 06th November 2017 produced with the petition marked 'P16', the 1st Respondent (earlier known as Urban Development Authority Rest Houses Limited) had informed the Petitioner that the agreement 'P3' would expire on 11th November 2017 and to handover the rest house premises by 12th November 2017. Aggrieved by this letter, the Petitioner filed this application seeking a Writ of Certiorari to quash 'P16'. Subsequent to the filing of this application, the 1st Respondent, by letter dated 12th March 2018 produced with the second amended petition marked 'P16i' requested the Petitioner to handover the rest house premises by 26th March 2018. The Petitioner is seeking a Writ of Certiorari to quash this letter, as well.

The Petitioner's first contention was that he had expended large sums of money for the development of the rest house premises and that he had a legitimate expectation that the management period would be extended, thus enabling him to recover his investment.

The Petitioner relied on letter dated 25th April 2017 produced with the petition marked 'P13a' sent to him by the 1st Respondent as having created a legitimate expectation in his mind that if he carried out the repairs referred to in the said letter 'P13a', he would be entitled for an extension of the period of management. The letter 'P13a'¹ has been issued pursuant to a site inspection carried out by the officials of the 1st Respondent at a time when the agreement 'P3' was still valid. By 'P13a', the Petitioner has been requested, *inter alia*, to repair the roof of the four existing rooms and to expedite the construction of the six new rooms.

The six new rooms referred to in 'P13a' are the six rooms that the Petitioner has undertaken to construct in his development proposal set out in 'P4a' and which the Petitioner was required to complete within four years from the date of execution of the agreement 'P3'. The 1st Respondent has not held out to the Petitioner by 'P13a' that the management period would be extended if he completed the works referred to therein. By 'P13a', the 1st Respondent was only giving the Petitioner a second reminder that he ought to complete the works referred to in 'P13a'. Therefore, 'P13a' could not have created an expectation in the mind of the Petitioner that if he completes the construction of the six new rooms, he would be considered for an extension, as that was a requirement that he ought to have completed by 11th November 2013.²

¹ 'P13a' is referred to as a 'second reminder'

² Vide Clauses 7 and 8 of Agreement 'P3'

The Petitioner has produced with the petition six photographs of a partially constructed building, marked as 'P11a' to 'P11f'. During the course of the hearing, the learned Counsel for the Petitioner, having obtained instructions from the Petitioner, confirmed that these photographs had been taken in November 2017. The fact that the building containing the six rooms is still under construction demonstrates that the Petitioner had not acted upon 'P13a', in respect of the said six rooms. The Petitioner has also not adduced any proof that he had attended to any of the other matters set out in 'P13a', although the Petitioner has undertaken to do so by an undated letter produced with the petition marked 'P13b'.

It has to be noted that by letter dated 06th November 2015 produced with the petition marked 'P7b', the 1st Respondent had requested the Petitioner to repair the roof, which appears not to have been complied with. The letter marked 'P13a' served as a reminder with regard to the roof of the four rooms. It is further noted that by a letter dated 27th August 2015 produced with the petition marked 'P7a', the 1st Respondent had sought confirmation from the Petitioner on the value of the renovations carried out, in terms of the Agreement 'P3'. A reasonable prudent man would think that the Petitioner under the above circumstances would have entertained the thought that the 1st Respondent at the expiration of the time period of the agreement 'P3' would take steps to terminate the agreement and would not consider any extension being given to the Petitioner.

The Petitioner also relied on a letter dated 26th April 2017 produced with the petition marked 'P15' by which he claims that the officials of the 8th

Respondent had promised to extend the agreement. 'P15' does not refer to 'P13a' or to any particular official and has not been addressed to the 1st Respondent. The Petitioner has not adduced any material to prove that the letter 'P15' was in fact sent to the 1st Respondent. Without that fact being proved, the contents of the letter 'P15', in the opinion of this Court, becomes redundant.

In these circumstances, this Court is of the view that 'P13a' does not create any legitimate expectation that the management period would have been extended, had the Petitioner carried out the matters set out in 'P13a'. Hence, this Court rejects the first contention of the Petitioner.

The second contention of the Petitioner is that in terms of Clause 25 of the agreement 'P3', the Petitioner is entitled to a hearing prior to the termination of the said agreement.

It is common ground that the complaint of the Petitioner is based on the terms of the agreement 'P3'. In terms of Clause 1 thereof, the Petitioner had been appointed as rest house manager for the period 12th November 2009 to 11th November 2017. Thus, from 12th November 2017, the Petitioner is not entitled in terms of the agreement 'P3' to continue to manage the said rest house.

Clause 25 of the agreement 'P3' only specifies that after the expiration of the 8 year management period, consideration will be given to extend the management period by a further 8-10 years. This clause only requires the 1st Respondent to consider an extension of the period. The said clause does not require the 1st Respondent to afford the Petitioner a

hearing, either before the expiration of the 8 year period or after the expiration of the said period or when it considers an extension of the time period. Therefore, this Court is of the view that 'P16' and 'P16(i)' are within the provisions of the Agreement 'P3' and that there has not been any procedural impropriety when issuing 'P16' and 'P16(i)'.

In order to support his contention that the 1st Respondent ought to have afforded the Petitioner a hearing prior to issuing 'P16', the learned Counsel for the Petitioner relied on the judgment of this Court in **Multinational Property Development Limited v Urban Development Authority**.³ In this case, the UDA having decided to grant the petitioner a lease of a land for a period of 99 years and having accepted part of the premium payable and the legal fees and prepared the final draft of the lease agreement for signature, decided not to allocate the land to the Petitioner. The complaint of the petitioner in that case was that it should have been afforded a hearing prior to taking the said decision.

Ranaraja J, held that "*... individuals who have legitimate expectations based on promises made by public bodies that they will be granted certain benefits, have a right to be heard before those benefits are taken away from them*".

Given the facts of this application, the reasoning in **Multinational Property Development Limited v Urban Development Authority** would not apply as the 1st Respondent has not held out to the Petitioner, either by Clause 25 of the agreement 'P3' or by any other provision thereof or through any correspondence between the parties that the management

³ 1996(2) Sri LR 51

period would be extended at the end of the management period set out in the agreement 'P3'. In these circumstances, the necessity of affording the Petitioner in this application a hearing at the end of the management period set out in the agreement 'P3' does not arise.

The next case relied on by the learned Counsel for the Petitioner was the judgment of the Supreme Court in Sundarkaran v Bharathi and others⁴, where the appellant, who had been granted a liquor license for 1985 and 1986 had applied for an extension of the license for the year 1987. Having been asked to pay the license fee for 1987, the appellant called over at the office of the Government Agent, Kandy only to be informed that the license cannot be issued to him. One of the grounds urged by the Appellant was that he *"had a legitimate expectation that a license would be issued to him and that therefore he had a right to be heard before the Government Agent made any decision on the application for the renewal of the licenses."*⁵

On the basis of the facts of that case, Amerasinghe J held that the appellant had *"a legitimate expectation of success and therefore a right to a full and fair opportunity of being heard."*⁶ In the instant case, the 1st Respondent has not held out that the management period would be extended and thus, the dicta laid down in *Sundarkaran's* case would not apply.

A purported failure to consider an extension does not make the decision in 'P16' or 'P16i' illegal, as the 1st Respondent was acting well within the

⁴ 1989 1 Sri LR 46

⁵ Ibid. page 53

⁶ Ibid. page 60

terms of the agreement 'P3' when it requested the Petitioner to hand over the rest house premises. Considering the fact that the undertakings given by the Petitioner as set out in Clauses 7 and 8 of the agreement 'P3' had not been complied with by the Petitioner, the 1st Respondent cannot be faulted for not giving consideration to extend the agreement 'P3'. In the above circumstances, this Court is of the view that the contention of the Petitioner that in terms of Clause 25 of the agreement 'P3', he is entitled to a hearing either prior to or after the termination of the agreement 'P3' or during the consideration of an extension, is misconceived. Therefore, this Court rejects the second contention of the Petitioner.

The learned State Counsel took up the position that the purported grievance of the Petitioner arises out of a contract and is therefore outside the writ jurisdiction of this Court. As discussed above, this Court is of the view that the decisions contained in the documents marked 'P16' and 'P16i' are not illegal and that there has not been any procedural impropriety when issuing 'P16' and 'P16i'. On this basis alone, this Court is entitled to reject this application. However, for purposes of completeness, this Court would proceed to consider the position of the learned State Counsel.

The 8th Respondent⁷ has executed the first two management agreements 'P1b' and 'P1c'. The impugned agreement 'P3' has however been executed by Urban Development Authority Resthouses Limited, which the Petitioner claims is now known as Lanka Rest Houses Limited. No material has been placed before this Court as to the ownership of the

⁷ Urban Development Authority

1st Respondent and therefore, this Court has assumed that the 1st Respondent is 100% owned by the 8th Respondent.

The relationship of the parties vis-à-vis the management of the said rest house arises from the agreement 'P3' and therefore the rights and obligations of the parties are governed by the agreement 'P3'. The Petitioners complaint arises out of the agreement 'P3' and the decisions set out in 'P16' and 'P16i' arises from 'P3'. The jurisdiction of this Court to issue writs of Certiorari, conferred under Article 140 of the Constitution, is limited, *inter alia* to an examination of the legality of a decision of a public body exercising a public or statutory function. This jurisdiction cannot be extended to examine rights and obligations arising from a private contract, even though one party may be a public authority.

In Galle Flour Milling (Pvt) Limited vs. Board of Investment of Sri Lanka and another⁸ a Writ of Certiorari was sought to quash the termination of an agreement between the Petitioner and the Board of Investment. The Respondents raised a preliminary objection that the Petitioner was seeking relief based on a breach of a contractual right and therefore the Petitioner cannot maintain the said application.

Having considered the underlying facts, this Court had held as follows:

“An analysis of the relationship that existed between the parties reveals that as it was purely a contractual one of commercial nature, neither certiorari nor mandamus will lie to remedy the dispute over the rights of

⁸ (2002) BLR 10

the parties. The purported breach of such rights (and) the grievances between the parties, arise entirely from a breach of contract, even if one of the parties was a statutory or public authority”⁹

Tillekewardena J then went onto consider if the fact of the 1st Respondent being a statutory authority would lend to the commercial arrangement between the parties, a statutory flavour, thus enabling the petitioner in that case to invoke the writ jurisdiction of this Court. The Court, having taken into consideration the fact that even though the power to enter into a contract arises from the statute, the terms and conditions between the parties were entirely contractual and that the decision that was sought to be quashed was purely contractual, held as follows:

“Therefore the exercise of powers by parties in terms of the agreement, exclusively arises through the contract and though one of the parties is a public authority, rights of the parties are not amenable to writ jurisdiction.”¹⁰

A similar view has been expressed by this Court in **De Alwis v Sri Lanka Telecom**¹¹ where a writ of Certiorari had been sought to quash the decision to disconnect the telephone connection of the petitioner on the basis of non-payment of charges. The Court, while refusing the writ held as follows:

⁹ Ibid. page 11

¹⁰ Ibid. page 12

¹¹ 1995(2) Sri LR 38

*"The decision sought to be quashed is a decision founded purely on contract. The telephone was disconnected for failure to settle the outstanding bills as provided for in the agreement. This was a decision taken wholly within the context of the contractual relationship between the parties and not in the exercise of the powers of a public authority. Neither Certiorari or Mandamus will lie to remedy the grievances arising from an alleged breach of contract."*¹²

In Gawaramanna Vs Tea Research Board and others¹³ Sripavan J (as he then was) cited with approval the following passage of Thambiah J in Chandradasa v Wijeratne¹⁴.

"No doubt the competent authority was established by statute and is a statutory body. But the question is, when the respondent as competent authority dismissed the petitioner, did he do so in the exercise of any statutory power? The Act does not deal with the question of dismissal of employees at all. It does not specify when and how an employee can be dismissed from service - the grounds of dismissal or the procedure for dismissal. So that, when the respondent made his order of dismissal, he did so in the exercise of his contractual power of dismissal and not by virtue of any statutory power. If the petitioner's dismissal was in breach of the terms of the employment contract, the proper remedy is an action for declaration or damages. The Court will not quash the decision on the ground that natural justice has not been observed."

¹² Ibid. page 41

¹³ 2003(3) Sri LR 120

¹⁴ 1982 (1) Sri LR 412 at 415

Sripavan J thereafter held as follows:

“The powers derived from contract are matters of private law. The fact that one of the parties to the contract is a public authority is not relevant since the decision sought to be quashed by way of Certiorari is itself was not made in the exercise of any statutory power.”¹⁵

In the above circumstances, this Court agrees with the learned State Counsel that the purported complaints of the Petitioner arises out of the agreement ‘P3’, is entirely contractual and that the Petitioner therefore cannot invoke the writ jurisdiction of this Court. Hence, it would not be possible for this Court to entertain the application of the Petitioner, irrespective of the strength of the factual arguments.

For the reasons set out in this Order, this Court is of the view that a Writ of Certiorari will not lie to quash either ‘P16’ or ‘P16i’ and therefore refuses to issue notices on the Respondents. Accordingly, this application is dismissed, subject to the payment of costs to the 1st Respondent, fixed at Rs. 10,500.

Judge of the Court of Appeal

P. Padman Surasena, J

I agree.

President of the Court of Appeal

¹⁵ 2003(3) Sri LR 120 at page 124