

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

JB Fishing Industries (Pvt) Ltd.,
No. 133, Meetotamulla Road,
Wellampitiya.
Petitioner

CASE NO: CA/376/2016/WRIT

Vs.

1. Consumer Affairs Authority,
1st & 2nd Floor,
CWE Secretariat Building,
No. 27, Vauxhall Street,
Colombo 2.
2. W.K.B. Rohan Fernando,
No. 119/11,
Good Shed Road,
Aluthgama.
And 4 Others.

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Kalinga Indatissa, P.C., with Mahesh Senaratne and
Dhanushika Sigera for the Petitioner.
Manohara Jayasinghe, S.C., for the 1st, 3rd-6th
Respondents.

Decided on: 16.10.2018

Samayawardhena, J.

When this case came up before me for the first time the Court was invited to deliver the Judgment on the written submissions already filed of record.

The petitioner sold 38 units of fishing nets to the 2nd respondent and the latter complained to the 1st respondent-Consumer Affairs Authority that they were inferior in quality. The petitioner denied the allegation and the Consumer Affairs Authority initiated an inquiry into the said complaint under the Consumer Affairs Authority Act, No. 9 of 2003. Halfway through the inquiry, the petitioner agreed to supply 25 new fishing nets to the 2nd respondent as a settlement. This the petitioner says he did in deference to the Consumer Affairs Authority. Admittedly, the petitioner handed over the said new fishing nets to the 2nd respondent on 21.08.2015.¹ However the petitioner says that the 2nd respondent deliberately avoided signing the settlement for the Consumer Affairs Authority to terminate the proceedings.² Ten days after accepting the said fishing nets, the 2nd respondent has again complained to the Consumer Affairs Authority stating that those new nets are also inferior in quality.³ Thereafter the Consumer Affairs Authority has decided to re-fix the inquiry.⁴ The petitioner has raised a preliminary objection to re-fixing the matter for the inquiry, and the Consumer Affairs Authority has overruled that objection by X18 and the reasons have been given by X19. It is against that determination, the petitioner has filed this application seeking to quash the same by way of a writ of certiorari

¹ Vide X5.

² Vide paragraph 17 of the petition.

³ Vide X10.

⁴ Vide X12.

and to prohibit the respondents from proceeding with the inquiry by way of a writ of prohibition.

The petitioner's preliminary objection was based on the premise that "*fishing nets do not fall within the scope of section 13(1) of the Consumer Affairs Authority Act, No. 9 of 2003.*"⁵

Section 13(1) of the Act reads as follows:

The Authority may inquire into complaints regarding

- a) the production, manufacture, supply, storage, transportation or sale of any goods and to the supply of any services which does not conform to the standards and specifications determined under section 12; and*
- b) the manufacture or sale of any goods which does not conform to the warranty or guarantee given by implication or otherwise, by the manufacturer or trader.*

It is the position of the petitioner that "*Consumer Affairs Authority has not laid down standards and specifications under section 12 of the Act and also that fishing nets are not goods where warranties or guarantees are given and that in the aforesaid circumstances the inquiry cannot be conducted under section 13(1) of the Act.*"⁶

It appears that the Consumer Affairs Authority has not laid down standards and specifications under section 12 of the Act in relation to fishing nets and therefore section 13(1)(a) is inapplicable to the present inquiry. However section 13(1)(b) allows the Consumer Affairs Authority to inquire into whether the manufacturer or trader has violated the warranties given in relation to goods sold. These warranties can be either express or implied or both. The

⁵ Vide paragraph 26 of the petition.

⁶ Vide paragraph 26 of the petition.

petitioner speaks only of express warranties, but section 13(1)(b) speaks of "*the warranty or guarantee given by implication or otherwise.*"

The Consumer Affairs Authority in X19 has also referred to section 15 of the Sale of Goods Ordinance, No. 11 of 1896, to emphasize the implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale.

I think the Authority need not go that far, as section 32 of the Consumer Affairs Authority Act makes clearer provisions as to implied warranty.

Section 32(1) and (2) of the Act reads as follows:

- 1) *In every contract for the supply of goods or for the provision of services by any person in the course of a business of supply of such goods or provisions of such services to a consumer, there is an implied warranty that*
 - a) *the services will be provided with due care and skill;*
 - b) *that any materials supplied in connection with provision of such services will be reasonably fit for the purpose for which they are supplied;*
 - c) *the goods supplied or services provided will be in conformity with the standards and specifications determined under section 12 of this Act; and*
 - d) *the goods supplied will be reasonably fit for the purpose for which they are supplied.*
- 2) *Where a trader or any person other than a trader supplies any goods or provides any service to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the trader or other person of any particular purpose for which the goods or services are required or the*

result that he desire the service to achieve, there is an implied warranty that the services provided under the contract for the provision of such services and any materials supplied in connection with those services will be reasonably fit for that purpose or are of such a nature and quality that they might reasonably be expected to achieve that result, except where circumstances show the consumer does not rely, or that it is unreasonable for him to rely, on the trader's or such other person's skill or judgment.

It is clear that the Authority can proceed with the inquiry under section 13(1)(b) to ascertain whether the implied warranty given by the petitioner in relation to the goods sold has been breached.

The preliminary objection of the petitioner is devoid of merit, and the decision of the Authority by overruling that objection is justifiable.

Application of the petitioner seeking mandates in the nature of mandamus and prohibition is dismissed with costs.

Judge of the Court of Appeal