

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

Chandrasena Walimuni,
No. 62/2,
Kandy Road,
Ihala Imbulgoda,
Imbulgoda.
Petitioner

CASE NO: CA/WRIT/476/2015

Vs.

1. M.A.G. Hemachandra,
Chairman,
National Transport Commission,
No. 241, Park Road,
Colombo 5.
 2. National Transport Commission,
No. 241, Park Road,
Colombo 5.
- Respondents

Before: Mahinda Samayawardhena, J.
Counsel: C. Sooriyaarachchi for the Petitioner.
Vikum de Abrew, Senior D.S.G., for the
Respondents.

Decided on: 01.11.2018

Samayawardhena, J.

The Petitioner filed this application against the Respondent—the National Transport Commission—seeking (a) to quash by way of certiorari the decision of the Respondent dated 20.11.2015 whereby the Petitioner was informed that the Respondent would remove the Petitioner’s Seat Reservation Office at the Bastian Mawatha Bus Terminal, and (b) to compel by way of mandamus to allow the Petitioner to continue with that business, and not to allow that business to be carried on by the Respondent itself or to give it to any other party.

It is the position of the Petitioner that he has been running this business of reserving seats for bus commuters for a fee, for a long time at the Bastian Mawatha Bus Terminal with the permission of the then Chairman of the National Transport Commission (vide X1) in a container for which he paid the rental in a sum of Rs. 39,200/= per month to the container company in the name of the National Transport Commission (vide X2 series). According to him, thereafter, with the acknowledgement of the subject Minister and the direction of the National Transport Commission (vide X3), he bought the container for a sum of Rs. 350,000/= from the container company (vide X4) and carried on the business until he was informed by the Respondent to remove the container and stop running the business (vide X5 and X9).

Conversely, it is the position of the Respondent that the Petitioner has no right to continue the business of running the Seat Reservation Center in the Bastian Mawatha Bus Terminal. The Respondent does not admit X1 and X3—the two important

documents the Petitioner heavily relies on to seek the said reliefs.

In the first place, when major facts are in dispute, writ, especially mandamus, does not lie.

Be that as it may, the Petitioner tendered X1 dated 04.01.2012 to say that he was given permission by the then Chairman of the National Transport Commission to carry on the business. However, X1 cannot be construed as a formal grant or permission binding upon the Respondent to allow the Petitioner to carry on that business in the Bastian Mawatha Bus Terminal. It is a letter written by the Petitioner to the then Chairman of the National Transport Commission stating or suggesting some conditions to carry on the business in the Bus Terminal wherein there is an illegible two or three word endorsement (if I read correctly, "Manager Bastian Mw") with the signature of somebody.

X3 is denied by the Respondent *inter alia* stating that there is not even a reference number in the letter, suggesting that it is a forged or unofficial letter.

In any event, according to that letter X3, the then Chairman of the National Transport Commission has informed the Subject Minister that the Petitioner was given the permission to continue with the business upon the instructions given by the said Minister and also the Petitioner was informed to buy the container from the container company.

It is not clear on what basis the Minister has given instructions to the then Chairman of the National Transport Commission to allow the Petitioner to continue the business in the Bus

Terminal and, if so, for how long. The Minister is not a party to this application to ascertain, first, the genuineness of that document, and second, the basis to give such instructions, and third, for how long that permission was given, as that permission cannot in any event be forever.

The Respondent by tendering R4A and R4B states that, the Petitioner was given permission to operate a Seat Reservation Center only for the Bus Route from Wellawatte to Jaffna for a period of six months from 01.04.2011, which has now long lapsed, and he has no lawful right to operate any such business at Bastian Mawatha Bus Terminal.

The Petitioner has been informed from time to time to remove the structures and to stop operation of carrying out the business although the Petitioner has tendered only two of such letters marked X5 dated 12.06.2015 and X9 dated 20.11.2015.

The Respondent has tendered a letter marked R5 dated 20.06.2013 informing the Petitioner to stop operation of that business. That letter also refers to an earlier letter dated 15.05.2013 sent to the Petitioner asking the same.

The documents marked R8A and R8B were tendered by the Respondent to say that the National Transport Commission decided to operate the Seat Reservation Center in the Bastian Mawatha Bus Terminal from 01.12.2015 (vide X9).

The Petitioner has filed this application on 02.12.2015 and obtained an *ex parte* stay order against the Respondent preventing the Respondent from removing his office at Bastian Mawatha Bus Terminal, which is in operation up to now.

The Petitioner's demand, not to allow even the National Transport Commission to operate the Seat Reservation Center, but to allow only to him to carry out that business forever is unreasonable to say the least.

According to the Petitioner (vide X7), he is carrying on this business in the Bus Terminal for about 30 years. However, there is no formal permission given to the Petitioner to carry on such business except R4A and R4B tendered by the Respondent, which has long lapsed. He cannot be allowed to continue that business forever against the wishes of the present Management. The National Transport Commission has been asking the Petitioner at least from 2013 (vide R5) to vacate the place, but the Petitioner has been continuously defying it.

In the facts and circumstances of this case, I do not think that the decision of the Respondent to disallow the Petitioner to operate the Seat Reservation Center (in order for the Respondent itself to carry on the business) is illegal, unreasonable, arbitrary or *mala fide*. There is no legal basis to issue certiorari and/or mandamus against the Respondent.

Application is dismissed with costs.

Judge of the Court of Appeal