

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

Diesal and Motor Engineering
PLC.,
No. 65,
Jethawana Road,
Colombo 12.
Petitioner

CA CASE NO: CA/WRIT/43/2016

Vs.

1. Consumer Affairs Authority of Sri
Lanka,
Level 1 and 2,
CWE Secretariat Building,
No. 27,
Vauxhall Street,
Colombo 2.
2. W.P. Sumanawathie,
No. 417/2,
Near Bokotuwa,
Ethpitiya,
Walasmulla.
Respondents

Before: Mahinda Samayawardhena, J.
Counsel: Thishya Weragoda with Buddhika Illangatillake
for the Petitioner.
Chaya Sri Nammuni, S.S.C., for the 1st
Respondent.
Decided on: 22.11.2019

Mahinda Samayawardhena, J.

The petitioner company filed this application against the Consumer Affairs Authority of Sri Lanka, seeking to quash by way of writ of certiorari, the decision of the said Authority contained in A13(a) and A13(b) whereby the petitioner was directed to pay a sum of Rs.703,794/= to the consumer, who was made the 2nd respondent to this application; and to prevent the Authority by way of writ of prohibition from implementing the said decision.

The complaint of the consumer to the Consumer Affairs Authority was that, the vehicle which she purchased from the petitioner was defective.

The Consumer Affairs Authority filed objections to this application.

The petitioner challenges this decision of the Consumer Affairs Authority on several grounds. One of them is that the inquiry panel which held the inquiry into the complaint of the consumer

was not properly constituted, and therefore, the impugned order made by the said panel is a nullity.

In terms of section 3(4) read with item 8(2) of the Schedule to the Consumer Affairs Act, No.9 of 2003, "*The quorum for any meeting of the Authority shall be four members.*"

It is undisputed that upon the complaint of the consumer, the preliminary inquiry was held on 28.03.2013, and thereafter, the formal inquiry in terms of section 13(1) of the Act was held on 09.07.2013, at which the matter was settled between the petitioner and the consumer, whereby the consumer agreed to accept a sum of Rs.703,794/= from the petitioner in return of the vehicle, which the consumer says is defective.

This settlement did not materialise and each party points the finger at the opposite party for the failure to implement it.

It is thereafter, the Consumer Affairs Authority sent the impugned order to the petitioner, which is admittedly based on the said settlement arrived at the formal inquiry held on 09.07.2013. This is made clear *inter alia* by paragraph 35 of the statement of objections of the Consumer Affairs Authority where it is stated that "*the Respondent Authority had concluded the inquiry at which a settlement was arrived at and the final order reflects the settlement entered into.*"

According to the inquiry notes produced marked A11, the panel of inquiry had consisted of only three members. The Consumer Affairs Authority in paragraph 26 of the statement of objections whilst admitting it, has further stated that, when the settlement

was later converted into an order by A13(b) in terms of section 13(4) of the Act, all four members of the panel has signed it.

The said paragraph 26 reads as follows:

Answering the averments contained in paragraph 32 of the petition the respondent states that one of the members of the panel of inquiry had stepped out and was not present when the settlement was entered into on 9.7.2013. Nevertheless, since there was no analysis of the evidence required and since it was the settlement entered into by the parties that was converted into an order as per the provisions of section 13(4) of the Act, all four members of the panel had signed the order marked A13(b).

That means, there was no quorum for a proper meeting of the Authority, when the settlement, which is the essence of the inquiry, and which was later converted into a formal order, was reached.

As I stated earlier “*The quorum for any meeting of the Authority shall be four members*”, and signing the formal order after several months of the inquiry by four members will not validate an otherwise invalid meeting due to lack of quorum. In this case the inquiry was held on 09.07.2013 and the order was made on 29.05.2014. According to the inquiry notes, the inquiry has been held before three members, and the order has been signed by those three members of the inquiry panel and another member of the Authority. It is clear that there was no quorum to hold a proper inquiry in order to make a legally enforceable order based on the settlement arrived at in that inquiry.

In *Shell Gas Lanka Ltd. v. Consumer Affairs Authority of Sri Lanka* [2007] 2 Sri LR 212 at 215, in a similar situation, Sripavan J. (later C.J.) held that:

In the absence of a quorum for the meeting of the members of the 1st respondent Authority, I hold that the decision contained in the document marked P108 is devoid of any legal effect. Accordingly, a Writ of Certiorari is issued quashing the said document marked P108.

As this Court is satisfied with that argument raised by the learned counsel for the petitioner, there is no necessity to delve into the other arguments taken up by the learned counsel seeking to quash the impugned decision.

For the aforesaid reasons, I quash the impugned orders of the Consumer Affairs Authority marked A13(a) and A13(b) by certiorari and allow the application of the petitioner but without costs.

Judge of the Court of Appeal