

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

*In the matter of an application for a Mandates in  
the nature of Writ of Certiorari and Mandamus  
under Article 140 of the Constitution.*

**C.A./Writ/No.235/2014**

1. Gampaha District Co-operative Rural Bank  
Union Limited,  
No. 471/16, CBR Lane, Colombo Road,  
Gampaha.
2. Sooriyaarachchige Rajeeswari,  
No. 471/16, CBR Lane, Colombo Road,  
Gampaha.
3. Abeyratne Samarasinghe – Secretary,  
Gampaha District Co-operative Rural Bank  
Union Limited,  
No. 471/16, CBR Lane, Colombo Road,  
Gampaha.

**PETITIONERS**

Vs.

1. Consumer Affairs Authority,  
1<sup>st</sup> and 2<sup>nd</sup> Floor, W.W.E. Secretariat Building,  
P.O. Box 1581, 27, Vauxhall Street, Colombo 02.
2. The Chairman,  
Consumer Affairs Authority,  
1<sup>st</sup> and 2<sup>nd</sup> Floor, W.W.E. Secretariat Building,

P.O. Box 1581, 27, Vauxhall Street, Colombo 02.

3. The Director-General,  
Consumer Affairs Authority,  
1<sup>st</sup> and 2<sup>nd</sup> Floor, W.W.E. Secretariat Building,  
P.O. Box 1581, 27, Vauxhall Street, Colombo 02.
  
4. Milton Amarasinghe,  
Executive Director,  
Consumer Affairs Authority,  
1<sup>st</sup> and 2<sup>nd</sup> Floor, W.W.E. Secretariat Building,  
P.O. Box 1581, 27, Vauxhall Street, Colombo 02.
  
5. Maj. Gen. N. Jayasuriya,  
Executive Director,  
Consumer Affairs Authority,  
1<sup>st</sup> and 2<sup>nd</sup> Floor, W.W.E. Secretariat Building,  
P.O. Box 1581, 27, Vauxhall Street, Colombo 02.
  
6. Sunil Jayaweera,  
Executive Director,  
Consumer Affairs Authority,  
1<sup>st</sup> and 2<sup>nd</sup> Floor, W.W.E. Secretariat Building,  
P.O. Box 1581, 27, Vauxhall Street, Colombo 02.
  
7. Waruna Allawa,  
Member of Authority,  
Executive Director,  
Consumer Affairs Authority,  
1<sup>st</sup> and 2<sup>nd</sup> Floor, W.W.E. Secretariat Building,  
P.O. Box 1581, 27, Vauxhall Street, Colombo 02.

8. Kehellella M.P,  
Co-operative Society Ltd, Badalgama.

9. P.P.S. Fernando,  
General Manager,  
Kehellella M.P,  
Co-operative Society Ltd, Badalgama.

10. Arc Tech Lanka (Pvt) Ltd.  
No. 108/4, Rosmead Place, Colombo 07.

**RESPONDENTS**

Before: **M. T. MOHAMMED LAFFAR, J. &  
K. K. A. V. SWARNADHIPATHI, J.**

Counsel: S.A.D.S. Suraweera, for the Petitioner

Dr Sunil Coorey with A.W. Diana Rodrigo,  
(for the 1<sup>st</sup> -7<sup>th</sup> Respondents)

Amarasinghe (S.C.)  
(for the 8<sup>th</sup> and 9<sup>th</sup> Respondents)

Argument: By Written Submission

Decided on: 26.10.2021

**K.K.A.V. SWARNADHIPATHI, J**

**JUDGEMENT**

The 1<sup>st</sup> Petitioner is a legal entity that has the power to be sued or to sue. The 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners are the chairman and the secretary of the 1<sup>st</sup> Petitioner.

The 1<sup>st</sup> Petitioner is the Gampaha District Co-Operative Rural bank engaged in receiving deposits and lending money to its member societies. It also supplies computer equipment, furniture and other utility equipment to the member societies.

The Petitioner had called for bids for branded computer equipment on or around 07.02.2021. On receiving the quotations, the tender board of the 1<sup>st</sup> Petitioner had awarded the tender to the 10<sup>th</sup> Respondent. The 8<sup>th</sup> Respondent had requested computers. After purchasing the same from the 10<sup>th</sup> Respondent, the Petitioner had sold those computers to the 8<sup>th</sup> Respondent. When perusing the documents P6 (a-s), it appears that the Petitioner had sold the computers to the 8<sup>th</sup> Respondent. In the written submissions, Petitioner had pointed out that he was only a go-between to facilitate the sale of computers, and he had no direct connection in respect of the sale. The document P6 (a-s) proves otherwise.

The 8<sup>th</sup> Respondent had complained to the 1<sup>st</sup> Petitioner regarding malfunction/defects of the equipment sold to them by P7. The 8<sup>th</sup> Respondent had pointed out that as the petitioners' decision to award the tender, the 1<sup>st</sup> Petitioner must intervene. Especially when parsing P6 (a-s), it is the Petitioner who is liable. Document P8 speaks of the hardships the 8<sup>th</sup> Respondent had to face due to the inefficiency of the 10<sup>th</sup> Respondent.

It was only after facing difficulties in functioning that the 8<sup>th</sup> Respondent had complained to the 1<sup>st</sup> Respondent.

On receiving the complaint from the 8<sup>th</sup> Respondent, the 1<sup>st</sup> Respondent had summoned the 1<sup>st</sup> Petitioner. The Petitioner argues that the 1<sup>st</sup> – 7<sup>th</sup> Respondents had not headed that the 10<sup>th</sup> Respondent was responsible and not the Petitioner at the inquiry. According to the 1<sup>st</sup> – 7<sup>th</sup> Respondents, the 10<sup>th</sup> Respondent was summoned and was present at the inquiry held on 21.08.2013. The 10<sup>th</sup> Respondent had taken the ground that his responsibility was limited to fixing the computers. The Petitioner alleges that the 8<sup>th</sup> Respondent had not taken the proper care of the computers. Therefore, the malfunction was due to the 8<sup>th</sup> Respondents failure. The rooms where the computers are kept is not air condition. Thus, the dust had accumulated and caused the malfunction.

The Petitioner is trying to blame someone. Either the 8<sup>th</sup> Respondent or the 10<sup>th</sup> Respondent. The Petitioner contends that the 1<sup>st</sup> Respondent can hold an inquiry under Section 13 of The

Consumer Affairs Authority Act No 9 of 2003, only regarding goods and services within the scope described in Section 12 of the Act. Therefore, power is not confined to inquire about warranty given by implication or otherwise by manufacturer or trader.

Section 12 is in two parts,

*(1) the Authority may, for the purpose of protecting the consumer and ensuring the quality of goods sold or services provided, by notification published in the Gazette, from time to time, determine such standards and specifications relating to the production, manufacture, supply storage, transportations and sale of any goods, and the supply of any services.*

*(2) The Authority may, by notification published in the Gazette, adopt such standards and specifications prescribed by the Sri Lanka Standards Institution established by the Sri Lanka Standards Institution Act No 6 of 1984 relating to the production, manufacture, supply storage, transportation and sale of any goods, and to the supply of any services, as standards and specifications, to be determined under sub-Section (1).*

Whether the 1<sup>st</sup> Respondent has the power cannot be discussed by considering Section 12 only. One must look into the whole Act. Section 13 had given the power to the Authority to hold an inquiry, and Section 13 (b) speaks explicitly of manufacture or sale of any goods which does not conform to warranty or guarantee given by implication or otherwise.

In this instance, the Petitioner had implied to sell computers in good condition, which he had failed. Therefore the 1<sup>st</sup> Respondent has the power to hold an inquiry. The other argument taken by the Petitioner is that the 8<sup>th</sup> Respondent had not come within the Three months mentioned in the Act. The question was discussed in *Lankem Ceylon P.L.C. Ltd Vs Consumer Affairs Authority and six others* in case (C.A. No. 245/2011)

"I also need to comment on the time limit referred to in Section 13(2) of the Act. The three months referred therein is more or less is in the case in hand, the pesticide described as Biflex should act as a resistant to termites. As such as trade/manufacture has thought it fit to provide a warranty for five years. All this must have been contemplated after testing the chemical and giving some time for possible reactions. Otherwise, the warranty period may be a shorter period, i.e., one year. As such, the deciding factor would be the guarantee period which could

vary from product to product. As such, a complaint within the guarantee period would suffice, and this court cannot rule in favour of the petitioner company on this aspect."

Therefore, depending on the nature of goods/services, it may take more than three months to identify some form of defect in the goods purchased or the services obtained. As such, a complaint within the guaranteed period would suffice.

As the 8<sup>th</sup> Defendant had moved before the guaranteed period, the Petitioner's argument fails. When perusing the entire case, it is evident that Petitioner had opted to buy from the 10<sup>th</sup> Respondent and supply to the 8<sup>th</sup> Respondent. Therefore, the responsibility of supplying after sale facilities or arranging for it and holding the responsibility of goods lies in the Petitioner. As per to the doctrine of *Fraus omnia corrumpit*. The Petitioner had not come with clean hands. Anyone who does not come with clean hands cannot seek mercy in court.

For the reasons set out in this judgment, I see no reason to grant the prayers prayed by the Petitioner. I refuse the petition.

**Judge of the Court of Appeal**

**M. T. MOHAMMED LAFFAR, J.**

I agree.

**Judge of the Court of Appeal**