

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.

CASE NO: CA/WRIT/137/19

1. U. Prasanna Deepal  
No. 39/68, Hospital Road,  
Wettewa,  
Mathugama.
2. P.H. Dimuthu Asanka  
Dimuthu Pharmacy,  
Rathnapura Road,  
Mathugama.
3. W.D.W. Kumara Rodrigo  
No. 198, Kalutara Road,  
Mathugama.
4. L.H. Ananda  
No. 45, Janasavi Udagama,  
Agalawatta.
5. H.A. Chandra Kumara,  
Siri Sewana,  
Ovitigala, Weliketiya,  
Mathugama.
6. W.A.S. Chaminda Wickramarachchi  
No. 345/2, Kalutara Road,  
Mathugama.

7. H.A. Janaka,  
No. 36, Ridirekagama,  
Agalawatta.
8. K.D.S. Bandu Prasanna  
No. 158/18, Golden Field,  
Viharagama Road,  
Bellana.
9. M. Pushpa Kumari  
No. 107/5D, Kurunduwatta,  
Beruwela.
10. S.D. Sarath Gamini  
No. 23, D.A Munasinghe Mawatha,  
Mathugama.
11. M.A. Kanchana Tharanga,  
“Samagi”, Ambagahahena, Dodangoda.
12. J.A.D.M. Shantha Kumara  
No. 206/3, Sri Hemaloka Mawatha,  
Yatiana,  
Agalawatta.
13. S.P. Kumara Amarasekara  
No. 266C, Haritha Wimana,  
Udawela,  
Agalawatta.
14. R. Samantha Dissanayaka  
Abhayaraja Mawatha,  
Kadiradola,  
Mathugama.
15. K.C. Munasinghe  
No. 53, Meddegoda Road,  
Mathugama.

16. M.A. Kawindu Rukshan  
No. 310, Agalawatta Road,  
Wattewa,  
Mathugama.
17. K.G.Y. Maduranga Chandrasiri  
No. 58/3, Koswattagoda Road,  
Mathugama.
18. K.K.D. Ananda Daya Ranjith  
'Suhada Uyana', Welimanana,  
Mathugama.
19. D.F. Munasinghe  
'Gyara', Gankanda Road,  
Badugama,  
Mathugama.
20. A.K. Jayasingha  
Alubogaha Watta,  
Badugama,  
Mathugama.
21. N.L. Thewarapperuma  
Gankanda Road,  
Badugama,  
Mathugama.
22. M.A. Chaminda Jagath Kumara  
Agalawatta Motors,  
Kalawellawa Road,  
Agalawatta.
23. K.R. Bhuddhika Ranasinghe  
No. 20, Golden Field,  
Viharagama Road,  
Bellana.
24. G.S. Asanka Amarasekara  
No. 44/1, Dharmaraja Mawatha,

Panthiya,  
Mathugama.

25. T. Kumudini  
Wijesinghearachchi  
No. 310, Agalawatta Road,  
Wettewa,  
Mathugama.
26. D. Dilani Priyanka  
No. 36, Himabutuwilalanda,  
Vilpatha,  
Dodangoda.

**PETITIONERS**

VS.

1. Western Province Provincial Passenger  
Transport Authority  
No. 89, 'Ranmagapaya',  
Kaduwela Road,  
Battaramulla.
2. Mr. Thusitha Kularathne  
The Chairman,  
Western Province Provincial Passenger  
Transport Authority,  
No. 89, 'Ranmagapaya',  
Kaduwela Road,  
Battaramulla.
- 2A. Mr. O.W. Prasanna Sanjeewa  
The Chairman,  
Western Province Provincial Passenger  
Transport Authority,  
No. 89, 'Ranmagapaya',  
Kaduwela Road,  
Battaramulla.

3. Mr. Kumara Wijerathnayake  
The Deputy General Manager,  
Western Province Provincial Passenger  
Transport Authority,  
No. 89, 'Ranmagapaya',  
Kaduwela Road,  
Battaramulla.
  
- 3A. Mr. Asoka Wickramarachchi  
The Deputy General Manager,  
Western Province Provincial Passenger  
Transport Authority,  
No. 89, 'Ranmagapaya',  
Kaduwela Road,  
Battaramulla.
  
4. Mr. Mahesh Silva  
The Manager,  
Western Province Provincial Passenger  
Transport Authority – Regional  
Officer,  
5<sup>th</sup> Floor, District Secretariat Complex,  
Kalutara.
  
- 4A. Mr. Janath Perera  
The Manager,  
Western Province Provincial Passenger  
Transport Authority – Regional  
Officer,  
5<sup>th</sup> Floor, District Secretariat Complex,  
Kalutara.
  
5. Hon. Lalith Wanigarathne  
The Minister of Transport, Co-  
operative, Development and Trade,  
Housing and Construction, Estate  
Infrastructure, Industrial and Rural  
Development.  
Western Province.

6. Hon. Arjuna Ranathunga  
The Minister,  
The Ministry of Transport and Civil  
Aviation,  
7t Floor, 'Sethsiripaya', Stage II,  
Battaramulla.
  
- 6A. Hon. Gamini Lokuge  
The Minister,  
The Ministry of Transport and Civil  
Aviation,  
7t Floor, 'Sethsiripaya', Stage II,  
Battaramulla.
  
7. National Transport Commission  
No. 241, Park Road,  
Colombo 5.
  
8. Mr. Janka Mallimarachchi  
The Chairman,  
National Transport Commission,  
No. 241, Park Road,  
Colombo 5.
  
- 8A. Mr. Shasi Welagama,  
The Chairman,  
National Transport Commission,  
No. 241, Park Road,  
Colombo 5.
  
9. Mr. J.K. Jayasinghe,  
Jayasiri Smart Hotel,  
No. 85, Main Street,  
Pitigala.
  
10. Mr. W. Tharanga Ranjan,  
No. 311/5. Badugama,  
Mathugama.

11. D.S. Gunasekara (Pvt) Ltd.  
No. 38, Wimalawatta Road,  
Nugegoda.
12. Mr. H. Chandra Mahesh  
No. 102/3, Andagala Road,  
Mathugama.
13. Mr. Nimal Jayalath  
No. 205, Andagala Road,  
Mathugama.
14. Mr. Mallawaarahchige Jayantha  
Jayantha Tyre House,  
Baaduraliya Road,  
Agalawatta.
15. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

### RESPONDENTS

**Before:** M.T. MOHAMMED LAFFAR, J. and  
S.U.B. KARALLIYADDE, J.

**Counsel:** Rusdhie Habeeb with Rizwan Uwais for the Petitioners.

Dr. Wijeyadasa Rajapaksha, P.C., with Madhawa Jayawardena  
and D. Sirisena for the 1<sup>st</sup> to 4<sup>th</sup> Respondents.

Kuvera de Zoysa, P.C., with Dasun Nagahena and Pasindu  
Bandara for the 9<sup>th</sup> to 14<sup>th</sup> Respondents.

**Supported on:**

24.07.2019.

**Written Submissions on:**

09.09.2019 (by the Petitioners).

09.09.2019 (by the 1<sup>st</sup> to 4<sup>th</sup> Respondents).

06.09.2019 (by the 9<sup>th</sup> to 14<sup>th</sup> Respondents).

Order delivered on:

09.11.2021.

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MOHAMMED LAFFAR, J.

The Petitioners as holders of Passenger Service Permits for Regular Carriage Service who have been authorised by the 1<sup>st</sup> Respondent to operate omnibus service on Mathugama-Colombo (Route No. 430) have invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution seeking, *inter alia*, for the following main reliefs:

- c. a writ of *Certiorari* quashing the decision of the 1<sup>st</sup> Respondent changing Welipanna interchange to Dodandoda interchange in the Southern Expressway in the Passenger Transport Permits granted to 9<sup>th</sup>, 10<sup>th</sup>, and 13<sup>th</sup> Respondents.
- d. A writ of *Prohibition* against the 1<sup>st</sup> Respondent to prohibit 10<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> Respondents from using Didangoda interchange in Southern Expressway and journeying via Mathugama or starting from Mathugama.
- f. A writ of *Certiorari* quashing the decision of the 1<sup>st</sup> Respondent in granting Passenger Transport Permits to the 10<sup>th</sup> and 11<sup>th</sup> Respondents for transporting passengers from Mathugama-Colombo via Dodangoda-Kottawa interchanges in Southern Expressway.



- h. A writ of *Prohibition* preventing the 1<sup>st</sup> Respondent from regulating the Passenger Service Permit Route No. 430 Mathugama-Colombo via Dodangoda-Kottawa/Kadawatha and issuing permit to the buses on the Expressway and preventing from issuing any further permit.
- i. A writ of *Mandamus* compelling the 7<sup>th</sup> Respondent to regulate the Passenger Service Permit Route No. 430 Mathugama-Colombo via Dodangoda-Kottawa/Kadawatha and issue permit as per the regulation in the National Transport Act.

When this application was taken up before this Court for support on 24.07.2019, the learned President's Counsel for the 1<sup>st</sup> to 4<sup>th</sup> and 9<sup>th</sup> to 14<sup>th</sup> Respondents raised a preliminary objection pertaining to the *locus standi* of the Petitioners to maintain this application and moved that this application be dismissed *in limine*.

I wish to advert to certain facts, *albeit* brief, relevant to this application prior to considering the said preliminary objections.

In a nutshell, the Petitioners' case based on the purported allegation that the 1<sup>st</sup> Respondent has no authority to issue Passenger Transport Permits pertaining to the National Highways i.e., the Southern Expressway. They further state that the 7<sup>th</sup> Respondent National Transport Commission has the Authority to issue Passenger Transport Permit pertaining to the transport of the passengers in National Highways and Expressways as per the section 24 of the National Transport Commission Act, No. 37 of 1991.

Per contra, the learned President's Counsel for the 1<sup>st</sup> to 4<sup>th</sup> and 9<sup>th</sup> to 14<sup>th</sup> Respondents ("Respondents") state that as per item 8 of the List I (Provincial Council List) of the Nineth Schedule to the Constitution, regulation of road passenger carriage service and the carriage of goods by motor vehicles within the Province and provisions of inter-provincial road transport services are

vested in the Provincial Councils. They further submit that Article 154G (1) of the Constitution has empowered every Provincial Council to make statutes applicable to the Province for which it is established with respect to any matter set out in the Provincial Council List. Accordingly, the Western Provincial Council has made the Road Passenger Transport Services Statute, No. 1 of 1992, *inter alia*, to regulate the passenger carriage services within the Western Province and to establish the Western Province Road Passenger Transport Authority (i.e., the 1<sup>st</sup> Respondent).

The Respondents further took up the position that in any event, the Petitioners are not engaged in passenger carriage services via Southern Expressway and/or Outer Circular Expressway but via other thoroughfares (i.e., Galle Road). Therefore, they contended that the Petitioners do not have any *interest* in respect of the passenger carriage services via the said Expressways.

The learned President's Counsel for the Respondents also submitted that, one of the alleged impugned decisions, the Petitioners have sought to quash by way of writ of *Certiorari*, are several bus tenders which had been granted to the 9<sup>th</sup> to 14<sup>th</sup> Respondents by the 1<sup>st</sup> Respondent Authority. However, they further submitted, that the Petitioners cannot question the conditions of the material tender since the Petitioners have failed to state in their petition that the Petitioners themselves participated to the said tender.

Therefore, the learned President's Counsel for the Respondents took up the position that the Petitioners have no *locus standi* to file the instant application for the reason that they have not participated in the tender process, and they cannot claim that they are *aggrieved* by the said tender process as they have never participated in the said tender. Thus, the Respondents relying on the dictum of Lord Denning in *R vs. Paddington Valuation Officer* [1966] 1 QB

380 at 401, strenuously contended that the *Petitioners are mere busy bodies who are interfering in things which do not concern them.*

The Petitioners, in their petition clearly state that as they are being the route permit holders to the route 430 – Mathugama to Colombo, engaging in transportation of passengers daily from Mathugama to Colombo on a roaster basis. They further state that even though, they initially were granted approval to transport passengers via Galle Road (normal route), on or around 12.04.2014, the 1<sup>st</sup> Respondent permitted their Association to operate omni bus services on daily basis on the Southern Expressway route (*vide para 4 of the petition dated 25.03.2019*).

The Petitioners appending a tender notice dated 09.11.2015 issued by the 1<sup>st</sup> Respondent (marked P3) submitted that, the 1<sup>st</sup> Respondent called tender from private bus owners, *inter alia*, (i) to transport the passengers via normal route (430 – Mathugama to Colombo), (ii) via new route i.e., Southern Expressway and (iii) to replace the buses which ousted from transportation of passengers.

Since the 1<sup>st</sup> Respondent Authority allocated only two buses in the route EX-01/430/138: Kottawa-Mathugama via Dodandoda in Southern Expressway and four buses in the route EX-01/430: Kadawatha-Mathugama via Dodangoda in Southern Expressway, the Petitioners' Association submitted an objection dated 20.11.2015 (*vide documents marked P4a, P4b, and P4c*) to the 5<sup>th</sup> Respondent, the Minister of Transport of the Western Province.

The Petitioners further state that the Association requested the Regional Office of the Western Province Provincial Transport Authority situated in Kalutara by its letter dated 16.02,2016 to grant permits for two additional omni luxury buses to transport passengers from Mathugama at 5.30 and 7.30 am due to the needs that prevailed for the transportation of passengers in Route No. 430 Mathugama to Colombo via Dodangoda-Kottawa interchange

in Southern Expressway. Upon this request, the Regional Office of the 1<sup>st</sup> Respondent, on or around 19.02.2016 recommended for two omni buses to transport passengers in the above route interchange in Southern Expressway and requested the Authority to approve the same by its letter dated 19.02.2016 (*vide documents marked P6 and P7*).

Meanwhile, the Petitioners state, that the 1<sup>st</sup> Respondent approved a bus route permit on 03.11.2016 to the 9<sup>th</sup> Respondent for the route EX-01/435 from Pelawatta situated in Mathugama to Pettah via Welipanne and Kottawa interchange in Southern Expressway to transport the passengers by omni luxury bus. Even though, the 9<sup>th</sup> Respondent granted permit for the above route, later, the 1<sup>st</sup> Respondent permitted him to change the interchange from Welipanne to Dodangoda for the route EX01-435 on or around January 2017. The interchange approval strongly objected by the Petitioners (*vide document marked P9*).

It is also observed that the 1<sup>st</sup> Respondent, on 08.02.2019, again called a tender (marked P21) for Passenger Service Permit to transport passengers within the Western Province for the route EX-01-02/430/151/235 Mathugama to Kiribathgoda via Dodangoda-Kaduwela interchange in the Southern Expressway. Pursuant to the documents marked P21a, P21b, and P21c it is clear, that some of the Petitioners (i.e., 3<sup>rd</sup>, 10<sup>th</sup>, and 11<sup>th</sup> Petitioners) had submitted their application for this tender.

In the above, it will be seen that, from the beginning, the Petitioners have showed their interests and involvements to get the Passenger Service Permits to transport passengers via Southern Expressway from the normal route i.e., Galle Road. It will be further seen that, while approaching the relevant authorities to get the permits, the Petitioners also objected some alleged irregularities in the permit granting process of the authorities (i.e., 1<sup>st</sup> Respondent) through various correspondence that are annexed to the petition.

It is true that, in our country, the *locus standi* requirement is based on “sufficient interest” in the matter in dispute. This Court, in its judgment of *Perera and Others vs. Central Freight Bureau of Sri Lanka and Another* [2006] 1 Sri LR 83, has considered an objection as to the standing of the Petitioner. The Court cited *Premadasa vs. Wijewardena and Others* [1991] 1 Sri LR 333 where Thambiah CJ at page 343 observed that, “The law as to *locus standi* to apply for certiorari may be stated as follows: The writ can be applied for by an aggrieved party who has a grievance or by a member of the public. If the applicant is a member of the public, he must have sufficient interest to make the application.”

Now it is trite law that ‘high flown technical objections regarding *locus standi* have no place in the modern Administrative Law’. This view has recently acquainted in the case of *Senadheerage Hesandu Dilsara vs. Upali Gunasekara and Four Others* [CA/WRIT/440/2014, CA Minutes of 17.03.2021] a two judge Bench of this Court, while allowing the application, analysed the term “sufficient interest” as opposed to the outdated requirement of “personal interest” because of the element of “public interest”. This sentiment well advanced by our apex courts in *Vasudeva Nanayakkara vs. Governor, Central Bank of Sri Lanka* [2009] BLR 41 (SC) and *Jathika Sevaka Sangamaya vs. Sri Lanka Ports Authority* [2003] 3 Sri LR 146 (CA)).

Furthermore, as H.W.R. Wade and C.F. Forsyth note in their celebrated work *Administrative Law* 9<sup>th</sup> Edition, at page 684, “The prerogative remedies, being of a ‘public’ character, have always had more liberal rules about standing than the remedies of private law.”

In the circumstance, to my mind, there can be no doubt that Petitioners are not a mere busy body; they have shown sufficient interests in dispute.

I therefore, hold that the Petitioners have *standing* to invoke the jurisdiction of this Court in regard to this instant application.

Accordingly, I proceed to overrule the preliminary objections raised by the learned President's Counsel for the 1<sup>st</sup> to 4<sup>th</sup> and 9<sup>th</sup> to 14<sup>th</sup> Respondents on the *locus standi* of the Petitioners.

*Preliminary objection overruled.*

JUDGE OF THE COURT OF APPEAL

S.U.B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL