

**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 Mandamus in terms of Article 140 of the Constitution of the Republic of Sri Lanka.

Nagananda Kodituwakku  
General Secretary  
Vinivida Foundation  
99, Subadrarama Road,  
Nugegoda.

**Petitioner**

**Case No. CA/Writs/609/2021**

**Vs.**

1. D.M.S. Dissanayake,  
Chairman, Consumer Affairs  
Authority (CAA),  
1<sup>st</sup> Floor, CWE Secretariat,  
27, Vauxhall Street,  
Colombo 02.
2. Mrs. Siddika Senarathna,  
The Director General,  
Sri Lanka Standards Institute,  
17, Victoria Place,  
Colombo 08.
3. Thushan Gunawardena,  
The Former Executive Director of  
Consumer Affairs Authority CAA,  
154/8, Purwarama Road,  
Colombo 05.
4. Laugfs Holdings Ltd,  
101, Maya Avenue,  
Colombo 06.

- 4A. Laugfs Gas PLC,  
101, Maya Avenue,  
Colombo 06.
5. Litro Gas Lanka Ltd,  
267, Union Place,  
Colombo 02.
6. Bandula Gunawardana,  
Minister of Trade,  
492, De Mel Mawatha,  
Colombo 05.
7. Lasantha Alagiyawanna,  
State Minister of Consumer  
Protection,  
Ministry of Consumer Protection,  
27, Vauxhall Street  
Colombo 02.
8. P.P.D.S. Muthukumarana,  
Government's Chief Valuer,  
Valuation House,  
748, Maradana Road,  
Colombo 10.
9. C.D. Wickramaratna,  
Inspector General of Police,  
Police Head Quarters,  
Colombo 01.
10. Attorney- General,  
Attorney General's Department,  
Hulfsdorp Street,  
Colombo 12.

**Respondents**

**Before** : Dr. Ruwan Fernando, J. &  
M. Sampath K.B. Wijeratne, J.

Petitioner is present in person.

**Counsel** : F. Jameel, SASG, P.C. with Manohara Jayasinghe  
SSC, M. Sri Meththa for 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 10<sup>th</sup>  
Respondents.

Suren De Silva with Rashini Dias and J. Samarasinghe  
for the 4A Respondent.

Harsha Amarasekara PC with Ruwantha Cooray and  
A. Thureraja for the 5<sup>th</sup> Respondent.

**Supported on** : 14.12.2021, 15.12.2021 & 16.12.2021

**Decided on** : 17.12.2021

**Dr. Ruwan Fernando, J**

The Petitioner in person, by Petition dated 07.12.2021 seeks, *inter alia*, orders in the nature of writ of mandamus:

- (1) compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to (a) formulate health and safety standards for LP Gas Cylinders and (b) ensure that all LP gas cylinders released for household use are conformed to such stipulated standards;
- (2) compelling the Attorney-General to institute legal proceedings against the 4<sup>th</sup> and 5<sup>th</sup> Respondents in terms of section 13 of the Consumer Affairs Act, No. 09 of 2003, under section 45 of the Sri Lanka Standard Institution Act, No. 06 of 1984 and under section 298 of the Penal Code or under any other provision of law for the commission of a serious criminal offence that warrants imprisonment and payment of compensation to all victims who had suffered loss of life and property damage;
- (3) compelling the 9<sup>th</sup> Respondent who holds a public office in trust to institute a criminal investigation against the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup> Respondents and institute criminal proceedings against them forthwith for criminal negligence and breach of trust;
- (4) compelling the 8<sup>th</sup> Respondent to conduct a credible and independent inquiry into incidents of loss of life and property caused by the gross negligence on the part of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> Respondents and to ascertain the pecuniary losses sustained by each household with a detailed report furnished to the court;

The Petitioner further seeks an order to grant compensation to each victim-family that has suffered loss of life, property damage or both due to the criminal negligence of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> Respondents to be borne by them in their personal capacity.

The Petitioner seeks the following interim orders against the 4<sup>th</sup> and the 5<sup>th</sup> Respondents as prayed for in the prayer to the Petition:

(b) preventing and/or prohibiting the 4<sup>th</sup> and 5<sup>th</sup> Respondents from releasing gas cylinders meant for domestic use until proper investigation is carried out guaranteeing the safety of the consumers to the satisfaction of the Court;

(c) compelling the 4<sup>th</sup> and 5<sup>th</sup> Respondents to recall all gas cylinders already released to domestic use until the above prayer (b) is satisfied;

(d) freezing all assets belong to the 4<sup>th</sup> and 5<sup>th</sup> Respondents:

The Petitioner served notices on all Respondents except the 2<sup>nd</sup> and the 7<sup>th</sup> Respondents. They were however, represented by the Hon. Attorney-General during the hearing. This application was supported by the Petitioner on 14.12.2021 and we heard the learned Senior Additional Solicitor General representing the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup> and the 10<sup>th</sup> Respondents, the learned Counsel for the 4<sup>th</sup> Respondent and the learned President's Counsel for the 5<sup>th</sup> Respondent who resisted notice being issued on the Respondents.

When this matter was taken up for further hearing on 15.12.2021, we intimated to the learned Counsel for the 4<sup>th</sup> Respondent and the learned President's Counsel for the 5<sup>th</sup> Respondent to consider, in the interests of the public, whether, the 4<sup>th</sup> and the 5<sup>th</sup> Respondents could give an undertaking on an urgent basis in respect of the interim reliefs sought by the Petitioner without prejudice to their respective positions. On 14.12.2021, the learned Counsel for the 4<sup>th</sup> Respondent tendered to Court a draft undertaking in writing and the learned President's Counsel for the 5<sup>th</sup> Respondent too tendered to Court the present position and a draft undertaking in writing with regard to the practical implementation of the undertaking. As the Petitioner did not fully agree with the undertakings given by the 4<sup>th</sup> and 5<sup>th</sup> Respondents, we further heard the Petitioner, the learned Senior Additional Solicitor-General appearing for the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup> and the 10<sup>th</sup> Respondents, the learned Counsel for the 4<sup>th</sup> Respondent and the learned President's Counsel for the 5<sup>th</sup> Respondent.

The Petitioner sought permission to amend the caption by adding the Laugfs Gas PLC as a Respondent and the learned Counsel for the 4<sup>th</sup> Respondent did not object to the said application. We allowed the application of the Petitioner to add the Laugfs Gas PLC as the 4A Respondent and the Laugfs Holdings Ltd, named as the 4<sup>th</sup> Respondent was discharged from the proceedings. We directed the Petitioner to amend the caption accordingly.

On 16.12.2021, the 4A Respondent tendered to Court a limited objection incorporating the undertaking without prejudice to its position and the 5<sup>th</sup> Respondent tendered to Court two affidavits by incorporating the undertaking and the present position of the case without prejudice to its position.

As the Petitioner did not fully agree with the undertakings given by the 4A and 5<sup>th</sup> Respondents, we decided, in the public interests, to make our order sought by the Petitioner on the basis of the material presented to Court by the parties and the undertakings given by the 4A and the 5<sup>th</sup> Respondents, until the question of notice is decided.

The Petitioner submits that the 4A and 5<sup>th</sup> Respondents are the primary suppliers of domestic gas cylinders in Sri Lanka with the composition of 80% Butane and 20% Propane and that the incidents of gas explosions are reported daily due to the composition of the gas cylinders being changed risking the lives of the consumers and damages to their private property. The Petitioner relies on the document marked X2 which had been issued by the Director, HSE & Quality Assurance of the 5<sup>th</sup> Respondent with regard to the claimed comparative advantages of the gas composition of 12.5 Kg gas cylinder with the new Premium Hybrid 18 L gas cylinder introduced by the 5<sup>th</sup> Respondent. We find that the 5<sup>th</sup> Respondent's own document marked X2 indicates that the gas composition of 12.5 kg domestic gas cylinders was Butane 80% and Propane 20%.

The Petitioner states that and the investigations carried out by the former Executive Director of Consumer Affairs Authority (the 3rd Respondent) and the tests carried out by Intertek Laboratory on 17.04.2021 at the request of the 1<sup>st</sup> Respondent revealed that the Butane and Propane composition of the cylinders had been changed to 50% to 50% which resulted in a drastic change of pressure inside the cylinder at the normal room temperature. *Prima facie*, the Certificate of Quality issued by Intertek Laboratory (X3) at the request of the 1<sup>st</sup> Respondent dated 17.04.2021 indicates that the LPG composition taken from the samples was Propane 48.57% (Mol) and Butane (Iso-Butane 18.17% (Mol) + n-Butane 30.88% (Mol).

It is stated on the letter signed by the Director-General of Consumer Protection State Ministry dated 04.12.2021 (R13) that as at 04.12.2021, 60% of the gas cylinders with a change of composition was available in the market and the tests carried out at the CPC Laboratory from the samples taken from the Ship "Gas Challenger" on 03.12.2021 revealed that the gas composition was Butane 50% and Propane 50% while the composition of the new shipment was proved to be Butane 70% and Propane 30%.

We are of the view that the adherence to the standard gas composition of the gas cylinder is a fundamental requirement for the quality assurance of the product and safety of the consumers. We find, however, that the 1<sup>st</sup> Respondent by e-mail dated 11.06.2021 (1R1) had requested the Sri Lanka Standards Institute (2nd Respondent) to formulate the regulation of the Butane-Propane gas composition for safety and efficient factors. Although the SLSI had called for suggestions from the General Public on revising the existing standard set for LP Gas (1R2), no action has been taken to determine the standard gas composition. As there was no

response to the said letter, the 1<sup>st</sup> Respondent had sent a reminder to SLSI by letter dated 28.11.2021 (1R3) but so far, no standard gas composition has been determined by the SLSI. Unless we interfere and make an appropriate direction on an urgent basis in the interests of the public, we believe that no urgent corrective measures will be taken by the SLSI resulting in the consumers becoming victims after using LP gas cylinders that do not conform to the safety gas composition.

The Petitioner states that due to sheer negligence on the part of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, a number of consumers who used the LP gas cylinders supplied by 4A and the 5<sup>th</sup> Respondents for domestic use, suffered physical injury and damage to their private property due to explosions caused by leakage of gas from the unsafe gas cylinders which were only meant to withstand the pressure generated by the composition of Butane 80% and Propane 20%. The Petitioner further states that these gas cylinders-based explosions occur on a daily basis with no corrective measures taken by the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents to arrest the situation.

During the hearing, the 4A and the 5<sup>th</sup> Respondents denied the several allegations as are contained in the Petition of the Petitioner and the 5<sup>th</sup> Respondent submitted a daily report in relation to the gas leakage, incidents of explosions and damages to the property. This indicates that on 11.12.2021, there had been 29 incidents and on 12.12.2021, there had been 22 such incidents (Litro 21 and Laugfs-1), which includes damage to regulator- 1, damage to the top of the gas cooker -19, damage to the gas pipe -1 and gas leakage- 1.

It was contended on behalf of the 4A and the 5<sup>th</sup> Respondents that the new gas cylinders were released with a shrink wrap in the colour red for Litro and green colour for Laugfs so as to distinguish from the stock currently available in the market on the direction made by the 1<sup>st</sup> Respondent. The Report filed by the 5<sup>th</sup> Respondent to the Court on 12.12.2021 shows that incidents involving new gas cylinders released to the market with a red colour shrink wrap had been reported to the 5<sup>th</sup> Respondent as the cap of the old gas cylinders with the red colour shrink wrap used to distinguish the new gas cylinders being mistakenly placed on old gas cylinders.

The Interim Report issued by the Panel appointed by His Excellency the President dated 06.12.2021 which was tendered to Court by the 5<sup>th</sup> Respondent during the hearing reveals that there had been 458 gas-cylinder related incidents reported to the Committee from 01.01.2021 to 05.12.2021. Out of 458 incidents, 244 incidents relate to complaint of leaks and other relate to damage to the gas cylinder-1, damages to the gas pipe- 23, damage to the regulator-09, gas cooker and the glass top of the cooker-178, damage to other property due to high temperature- 03 and gas leaks-244. The second cause that has been identified by the Committee for gas related incidents was the substandard or expired equipment such as regulators, gas supply pipes, hose clips and dilapidated furnaces.

The Committee has stated in the Interim Report that the absence of the required level of odorant (Ethyl Mercaptan) to detect gas leaks was a major problem identified by the Committee. The 1<sup>st</sup> Respondent too has informed the 4A and the 5<sup>th</sup> Respondents not to release gas cylinders to the market without the required level of odorant (Ethyl Mercaptan) (1R14,1R7,1R8) and directed the 5<sup>th</sup> Respondent to immediately suspend releasing LP gas till the requirement of LP gas odor is satisfied by them (1R8). Unless immediate measures are taken to add Ethyl Mercaptan to detect a gas leak, before releasing new gas cylinders to the market, more consumers are likely to become victims after using LP gas cylinders without being able to detect a gas leak.

The 1<sup>st</sup> Respondent has informed the 4A and the 5<sup>th</sup> Respondents by letters marked 1R16 and 1R17 to recall immediately all gas cylinders that had been released to the market prior to 04.12.2021 and accept all sealed and unused gas cylinders which are returned by the consumers who purchased them prior to that date. The 1<sup>st</sup> Respondent has further directed them not to release such gas cylinders collected from the market and to use the new colour shrink wrap (green colour for Laugfs and red for Litro) (1R16, &1R17).

The learned Senior Additional Solicitor General submitted that the 1<sup>st</sup> Respondent acted fairly and followed the proper procedure according to law and produced the directions made by the 1<sup>st</sup> Respondents to the 4A and the 5<sup>th</sup> Respondents to comply with the provisions of the Consumer Affairs Authority Act and the specifications to ensure the quality and safety of the LPG cylinder before releasing them to the market.

The 4A Respondent has undertaken in its affidavit, without prejudice to its position (i) to display, until the SLIS introduced specifications relating to the composition of LPG, the composition, which has been maintained by Laugfs Propane: 25-35% and Butane: 65-75%); (ii) In the event the SLSI introduces specifications relating to the composition of LPG in the future, to display such LPG composition on the cylinders or be changed to reflect the maximum composition of Propane and/or Butane as may be prescribed by the SLSI from time to time; (iii) the new refill gas cylinders that would be released to the market will consist of the composition as stated above and have a shrink in the colour as stipulated by the 1<sup>st</sup> Respondent; (iv) it will ensure that all refilled unsold LPG gas cylinders bearing the "Laugfs" mark which were distributed before 01.12.2021 with the green colour shrink wrap for domestic use will be collected from its dealers and distributors before 24.12.2021.

The 5<sup>th</sup> Respondent has undertaken in its Affidavits, without prejudice to its position (i) to recall and replace the full gas cylinder stocks currently available in the market and to replace those recalled stocks with a new full gas cylinder on a free of charge basis; (ii) they will affix a sticker on each gas cylinder sold as to the composition of LP gas and until the SLIS introduces specifications relating to the

composition of LP gas, the stickers will give the gas composition which has been maintained by them (Litro- Propane: 25%-40 wt.% and Butane: 75-60 WT.%).

We find that so far, no remediable measures had been taken by the 4A and the 5<sup>th</sup> Respondents as safe suppliers of LP gas to consumers, to avoid continuing incidents of damage to the private property caused by the gas-cylinder related explosions and leakages that cause risks and immeasurable hardships to the consumers.

We are convinced that unless we make the following orders in the public interests, it will lead to devastating consequences to consumers leaving no way of undoing the loss of life, injury and damage to property of consumers who use gas cylinders for their daily domestic needs. The Petitioner invited us to direct the 4A and the 5<sup>th</sup> Respondents to replace all partly-used gas cylinders that are in the possession of the consumers. We heard the parties on the practical implementation of the Petitioner's concerns with regard to the replacing of partly-used gas cylinders in the possession of the consumers. We find that unless the 1<sup>st</sup> Respondent being the regulator suggests a practical and sensible mechanism to replace partly-used gas cylinders in the possession of the consumers without above-mentioned safety standards, with a fee for the unutilized volume of gas, any order that is made by us recalling partly-used gas cylinders is not practicable, and may cause a severe shortage of gas and more hardships to consumers.

In the circumstances, until the question of notice is decided, we make the following two orders, in the public interests, on the basis of the material presented to us at the hearing and the undertakings given by the 4A and the 5<sup>th</sup> Respondents to Court without prejudice to their respective positions.

1. Preventing and/or prohibiting the 4A and 5<sup>th</sup> Respondents from releasing gas cylinders meant for domestic use without (i) displaying on the gas cylinders the gas composition as may be prescribed by the Sri Lanka Standards Institute (2<sup>nd</sup> Respondent); (ii) the required level of Ethyl Mercaptan in the gas cylinders as may be prescribed by the Sri Lanka Standards Institute (2<sup>nd</sup> Respondent); and (iii) the shrink wrap in the respective colours as stipulated by the Consumer Affairs Authority (1<sup>st</sup> Respondent), until proper investigations are carried out by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
2. Directing the 4A and the 5<sup>th</sup> Respondents to recall all full, sealed and unused gas cylinders meant for domestic use that are either available in the market or with the consumers (if such consumers so wished to return), and replace those recalled gas cylinders with new full gas cylinders on a free of charge basis until the above order is satisfied.



Having considered the concerns of the consumers with regard to the partly-used gas cylinders, the 1<sup>st</sup> Respondent as the regulator of the consumer affairs, to suggest, within a shortest possible time to those consumers who wish to replace their partly-used gas cylinders without the above-mentioned safety standards, a practical and sensible mechanism, with a fee for the unutilized volume of gas.

This matter is fixed for support on the question of notice on 26.01.2022.

**JUDGE OF THE COURT OF APPEAL**

**M Sampath K.B. Wijeratne, J**

I agree,

**JUDGE OF THE COURT OF APPEAL**