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

In the matter of an Application for an Order in the nature of a Writ of Mandamus under and terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA WRT Application NO: 67/2020

Henagge Upali Wijayawardhana,
25 B,
Bambaragasthenna,
Pallebedda.

Petitioner

Vs.

1. Sumith Alahakoon,
   Commissioner-General of Motor Traffic,
   Department of Motor Traffic,
   No. 341, Elvitigala Mawatha,
   Narahenpita,
   Colombo 05.

2. People's Leasing And Finance PLC
   No. 1161,
   Maradana Road,
   Coplombo 08.

Respondents.

Before : **D.N. Samarakoon, J.**

B. Sasi Mahendran, J.

Counsel : Shyamal A. Collure with A.P. Jayaweera and P.S. Amarasinghe for the Petitioner

P. Ranasinghe, PC, ASG with I. Randeny, SC for 1st Respondent.

Written Submissions On : 20.06.2022 (for the Petitioner)

09.06.2022 (for the 1st Respondent)

Argued On : 31.03.2022

Decided On : 27.07.2022

B. Sasi Mahendran, J.

The Petitioner, by Petition dated 08th March 2020, invoking the writ jurisdiction of this Court in terms of Article 140 of the Constitution, prays for a Writ of Mandamus to compel the Commissioner General of Motor Traffic (the 1st Respondent) to issue a set of identification or number plates for his vehicle bearing registration No. SG GY- 6707 (formerly No. NW GY-6707).

A brief narration of the factual background is necessary before dealing with the legal issues in the application.

The Petitioner purchased a vehicle bearing registration No. NW GY- 6707 on 03rd April 2019 at a price of Rs. 6,400,000/- from one Galhena Appuhamilage Kamal Lionel George Gunarathna (the third owner of the vehicle since its initial registration), having obtained a loan of Rs. 5,000,000/- from the 2nd Respondent, People's Leasing & Finance Plc. Having paid

the prescribed rates for effecting a change of ownership, the Department of Motor Traffic (hereinafter sometimes referred to as "the Department") issued a new Certificate of Registration on 10th April 2019 (marked "P8"). On the same day, the Petitioner also made a payment for a new set of number plates as the vehicle was initially registered in the North Western Province and the Petitioner wanted it to be registered in the Sabaragamuwa Province (as evinced by the receipt dated the same marked "P7"). A long delay in issuing the number plates led him to inquire from the Department about the reason for the delay. The Petitioner had been verbally informed, by an officer, that the delay was because no number plates for the vehicle concerned had been ever issued by the Department. The Petitioner sent a letter of demand (dated 13th January 2020 marked "P17") demanding that the number plates be issued. The Petitioner then instituted this application when no reply was forthcoming.

The 1st Respondent objected to this application on the following grounds:

1. There are factual matters in dispute.
2. A Writ of Mandamus cannot be issued as the prerequisites have not been met.
3. The Petitioner's conduct does not entitle him to a discretionary remedy.

These will each be considered in turn.

1. Factual matters in dispute

A key fact that is in dispute is whether number plates have been issued for this vehicle at any point of time since its initial registration on 16th March 2003.

Once a vehicle is registered, the designated officer at the Department of Motor Traffic authorizes Access International (Pvt) Ltd., to whom the manufacturing/printing of number plates is outsourced, to manufacture/print a set of number plates for the respective vehicle on behalf of the Department.

The Respondent states that despite the vehicle concerned being first registered on 16th March 2003 the first order to manufacture the number plates for this vehicle was received by Access International only on the 27th of September 2018. (Meaning, there had been no request for number plates from the owner up to that date.) This is even though, as stated in the document marked "R1(a)" by which Access International informed the Commissioner General of Motor Traffic, the "GY" series numbers were issued only from December 2002 to September

2003. Access International categorically states that number plates for the vehicle concerned "were not issued as we did not receive the required approvals from the designated Officials of the Department of Motor Traffic". This letter also references "reject reports" dated 27th September 2018 and 11th April 2019. In respect of the latter, Access International had received a "don't print order" from the Assistant Commissioner of the Department.

The reject report dated 27th September 2018 (marked "R2") contains an entry in respect of GY-6707 which states "Un-issued Vehicle No.", thereby lending support to the Respondent's contention that the number plates for that vehicle were not issued as of 27th September 2018. The vehicle could not have been used if no number plates had ever been printed. Yet, this Court observes, that for a vehicle that could not have run, interestingly, as noted in the valuation report (discussed below), the meter reading denotes 71933 KM.

On the other hand, in terms of the Petitioner's version of the story, this vehicle did in fact have number plates. However, around the time when the purchase of the vehicle was being completed, the Petitioner was informed by Bandara Auto Traders, through which the vehicle was purchased, that the original number plates had been "misplaced" by the previous owner at a garage where the vehicle was repaired a few months earlier. A matter which the Petitioner admits he did not take seriously. The Petitioner submitted a copy of the complaint made by the previous owner to the Kurunegala Police on the 30th of May 2019 (marked "P10").

It is remarkable that in the written submissions of the Petitioner (at p. 13) a rather cavalier statement is made thus:

"Thus, **the Petitioner obviously knew at the time of purchasing the said vehicle that the number plates attached to it were not those issued by the Department of Motor Traffic.** However, as indicated above; **his concern was not whether the number-plates were genuine or not;** but whether the vehicle was a genuine one duly registered by the Department of Motor Traffic…" [emphasis added]

It must be noted that the Petitioner has failed to obtain the Original Certificate of Registration or a copy thereof issued in 2003 to the original owner. Further, the Petitioner has not obtained affidavits from the previous three owners, to substantiate his position, that number plates had been issued for the vehicle.

A further complication is the valuation report. The 2nd Respondent had caused an inspection of the vehicle to be carried out, prior to purchasing it. This inspection and valuation report dated **02nd April 2019** (marked "P6") contains photographs of the vehicle. Both number plates of the vehicle are clearly visible. Why such an ordinary matter as this raises suspicion is because the Police complaint made by the previous owner on **30th May 2019** (which complaint is made more than a month after ownership of the vehicle has changed hands to the current owner i.e., the Petitioner) the previous owner states that the number plates were misplaced **six months ago**. If this is correct, then an issue arises as to how in the photographs taken for the valuation report (dated 02nd April 2019) the number plates appear. Furthermore, if the Department's contention that no number plates had ever been manufactured/printed for this vehicle is true, then doubt is created as to how there are number plates in the photographs.

Irrespective of the fact that the vehicle may have been registered (albeit number plates not issued) at the Department, this raises the question of whether a prudent or reasonable person would purchase a vehicle when such person is aware or has reason to believe that the number plates on the vehicle have not been issued by the authorized channel.

Nonetheless, this Court is not the forum to contest these matters. This is because as noted by Wade & Forsyth in their seminal text, 'Administrative Law' 11th Edition, (at p. 557), "On the whole judicial review is not concerned with factual disputes and is ill-suited to resolve such disputes. In the absence of oral testimony courts rely on affidavit evidence without the benefit of cross- examination, and generally take the facts where they are in issue as they are deposed to by the public authority."

This Court exercising its writ jurisdiction cannot determine disputed matters of fact. This has been firmly established in our case law.

In Thajudeen v. Sri Lanka Tea Board [1981] 2 SLR 471, his Lordship Ranasinghe J. (as he then was) held:

"*That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity of examining their witnesses and the Court would be better able to judge*

which version is correct, has been laid down in the Indian cases of: Ghosh v. Damodar Valley Corporation, Parraju v. General Manager B. N. Rly."

This judgment was referred to with approval in the case of Dr. Puvanendran v. Premasiri [2009] 2 SLR 107 by Her Ladyship Shiranee Tilakawardane J. (with their Lordships Amaratunga J. and Marsoof J. agreeing).

One of the Indian judgments referred to by his Lordship Ranasinghe J. in Thajudeen (supra), which was later followed by our Courts, is the judgment of Bose J in Bibhuti Bhusan Ghosh v. Damodar Valley Corporation AIR 1953 Cal 581. Bose J. held:

"It is the case of the petitioner that he was not afforded an opportunity to take the assistance of his lawyer nor to cross-examine witnesses and tender his own witnesses for examination. This is however disputed by the respondents. A good deal of evidence has to be taken before any satisfactory conclusion can be arrived at on the points. As observed by G.N. Das J. in the case of Parraju v. General Manager, B.N. Rly AIR 1952 Cal 610 the remedy by way of an application under Article 226 of the Constitution is not a proper substitute for a remedy by way of a suit, especially where facts are in dispute and in order to get at the truth it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct".

(This passage was quoted in Office Equipment Ltd v. Urban Development Authority CA Application No 1062/2000, decided on 05.09.2003)

In Public Interest Law Foundation v. Central Environmental Authority [2001] 3 SLR 330, his Lordship U.De Z. Gunawardena J held:

"It is worth observing that the review procedure is not well suited to determination of disputed facts - factual issues arising in this case being imprecise and disputed."

In Office Equipment Ltd v. Urban Development Authority (supra), considering the above judgments, one of the grounds on which his Lordship K. Sripavan J. (as he then was)

decided that the Petitioner's claim cannot suitably be decided in a writ application was the contradicting claims by the Petitioner and the Respondent.

A similar approach is seen in the following line of recent judgments of this Court as well.

In Don William Warnaguptha Rajapakse v. K.P. Rangana Fernando CA Writ Application No:119/2013, decided on 09.05.2019, his Lordship Arjuna Obeysekere J. held;

"The question of title cannot be adjudicated by a Writ Court, as it involves disputed questions of fact, which could only be resolved by oral testimony of witnesses. The power of this Court to issue writs when the facts are in dispute was considered in the case of Thajudeen v. Sri Lanka Tea Board and Another."

Further, it was held that; "this Court is of the view that the question of the Petitioner's title is a matter for the Petitioner to establish in a Civil Court."

In Hettiarachchige Jayasooriya v. N.M. Gunawathie and others, C.A.Writ Application 63/2015, decided on 26.09.2019, his Lordship Janak De Silva J. held:

"The rationale is that where the major facts are in dispute and the legal result of the facts is subject to controversy it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct."

In Public Interest Law Foundation v. Central Environmental Authority CA WRIT, 527/2015 decided on 24.02.2020 his Lordship Mahinda Samayawardhena J. held:

"This Court in the exercise of writ jurisdiction cannot decide on administrative decisions where the facts involved are in dispute. Simply stated, when major facts are in dispute writ will not lie……This Court cannot decide whether the Petitioner or the Respondents are correct on this issue. That is outside the purview of this Court. When this

main ground upon which the Petitioner's whole case is based is in dispute, can this case be maintained? I think not."

2. **Pre-requisites for Mandamus**

The Respondent states that on information obtained from the Provincial Council of the North Western Province, it was found that the first payment to obtain the revenue licence for the entire period between 2003 to 2018 was made only on 03rd August 2018.

This lump sum payment of the revenue licence fee together with the number plate debacle raised suspicion of some fraud or deceitful activity. The Commissioner General thus requested the previous owners of the vehicle to be present at an inquiry on 10th February 2021 and, when they did not appear for it, again on 3rd March 2021, on which date too they did not appear. This led the Commissioner General to, by letter dated 09th March 2021 (marked "R5"), request the CID to investigate the importation and registration of this vehicle.

The Petitioner contends that in terms of the Motor Traffic Act once a vehicle is registered and a Certificate of Registration has been issued, as in the instant case, there is a duty cast on the Commissioner General to issue a number plate. The vehicle concerned had been duly registered on 16th March 2003 as evidenced by the Certificate of Registration marked "P1". This, it is said, gave rise to a legitimate expectation that the number plate would be issued on due registration and payment of the prescribed charges.

Further, the Petitioner contends the Department is at fault for waiting 18 years after the initial registration of the vehicle to begin inquiring into the irregularities. It is alleged that no steps were taken by the Department to conduct an inquiry to investigate any irregularities until the present application was filed. No order had been made to blacklist the vehicle either.

In response, the 1st Respondent submitted that these irregularities were discovered at the time of processing the Petitioner's request for a new set of number plates to reflect the change of registration from the North Western Province to the Sabaragamuwa Province.

Although the Department ought to have been more vigilant, the series of events that raised suspicion was only flagged when the Petitioner requested a new set of number plates. The suspicion was heightened by the findings of the National Audit Office uncovering a

fraudulent practice of registering new vehicles using details of old vehicles and a CID investigation surrounding 36 vehicles that did not have valid number plates. In the light of actual or potential fraudulent practices being carried out exercising caution and referring this case to be investigated seems prudent.

On that basis, the Respondent contends that there has been no refusal per se to issue the set of number plates as the same can only be issued at the conclusion of the CID investigation confirming that there was no fraud involved in the registration of the vehicle.

We agree with this contention. It is trite law that demand for the performance of the duty and a refusal to perform it must precede an application for Mandamus.

In Ratnayake v. C.D. Perera [1982] 2 SLR 451 his Lordship Sharvananda, J. (as he then was) held:

"The general rule of Mandamus is that its function is to compel a public authority to do its duty. The essence of Mandamus is that it is a command issued by the superior Court for the performance of public legal duty. Where officials have a public duty to perform **and have refused to perform,** Mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest." [emphasis added]

In the case of Credit Information Bureau of Sri Lanka v. Messrs Jafferjee and Jafferjee (Pvt) Ltd [2005] 1 SLR 89 his Lordship J.A.N. De Silva, J. (as he then was), with their Lordships S.N. Silva C.J. and Weerasuriya J. agreeing, set out the some of the prerequisites for issuing a Writ of Mandamus. One such condition was that "**the application must be preceded by a distinct demand for the performance of the duty."** [emphasis added]

Wade & Forsyth in, 'Administrative Law' 11th Edition (at p. 528) note:

"It has been said to be an 'imperative rule' that an applicant for a mandatory order must have first made an express demand to the defaulting authority, calling upon it to perform its duty, and that the authority must have refused. But these formalities are usually fulfilled by the conduct of the parties prior to the application, and refusal to perform the duty is readily implied from the conduct. The substantial requirement is that the public authority should have been clearly informed as to what the applicant expected it to do, so that it might decide at its own option whether to act or not."

S.A. De Smith's, 'Judicial Review' 8th Edition, (at p. 999) notes:

"It has long been held to be preferable for the claimant to be able to show that he has demanded performance of the duty and that performance has been refused by the authority obliged to discharge it. A claimant, before applying for judicial review, should address a distinct and specific demand or request to the defendant that he perform the duty imposed upon him. Today this learning is encapsulated in the general obligation on claimants to follow the steps set out in the Pre-Action Protocol for Judicial Review, which includes writing a letter before claim."

3. The Petitioner's truthfulness to Court.

The Respondent objects on this ground because the Petitioner may have been aware that the number plates on the vehicle he purchased were bogus number plates (and thereby not approached this Court with clean hands) and the Petitioner has gravely misrepresented facts to this Court by narrating the facts in a selective manner to create the impression that the 1st Respondent failed in its duties.

Our courts have held that non-disclosure of material facts when invoking discretionary remedies of this Court is fatal to the application.

The duty owed to this Court by a litigant initiating writ proceedings was set out by his Lordship Jayasuriya J. in Blanca Diamonds v. Wilfred Van Els [1997] 1 SLR 360. His Lordship held:

"In filing the present application for discretionary relief in the Court of Appeal Registry, the Petitioner company was under a duty to disclose uberrima fides and disclose all material facts to this Court for the purpose of this Court arriving at a correct adjudication on the issues arising upon this application."

In Jayasinghe v. The National Institute of Fisheries and Nautical Engineering [2002] 1 SLR 277, his Lordship Hector Yapa J. held:

"When a litigant makes an application to this Court seeking relief, **he enters into a contractual obligation with the Court. This contractual relationship requires the petitioner to disclose all material facts correctly and frankly**. This is a duty cast on any litigant seeking relief from Court." [emphasis added]

This passage was cited with approval in Dahanayake v. Sri Lanka Insurance Corporation [2005] 1 SLR 67. His Lordship Saleem Marsoof J. reiterated:

"Our Courts have time and again emphasised the importance of full disclosure of all material facts at the time a Petitioner seeks to invoke the jurisdiction of this court, by way of writ of certiorari, mandamus or any of the other remedies referred to in Article 140 of the Constitution."

The importance of a litigant approaching this Court for discretionary relief with clean hands goes without saying.

The Indian Supreme Court in the case of Kishore Samrite v. State of U.P. 2013(2) SCC 398, held:

"**The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation.... No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands"** [emphasis added]

This Court cannot arrive at a finding on whether there was an actual fraud or collusion that had taken place regarding the vehicle concerned and whether that happened with or without the knowledge of the Petitioner. Yet, the previous owner of the vehicle who had made a police complaint as to the misplaced number plates was not made a party to this application.

Nonetheless, as his Lordship Chitrasiri J. held in CA (WRIT) No. 412/2011 decided on 04.08.2015:

"When the acts of the person who is seeking to have a mandate in the nature of a writ are tainted with illegality, courts will not exercise its discretion to issue writs. Furthermore, Writ of Mandamus will not lie even when there exists a bad motive on the part of the applicant."

For the foregoing reasons, we dismiss this application with costs.

JUDGE OF THE COURT OF APPEAL

D.N.SAMARAKOON,J.

I AGREE

JUDGE OF THE COURT OF APPEAL