

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

CA/WRIT/373/2021

Expressway Private Bus Owners
Association – Western Province
(Guarantee) Limited
(G.L.00238349)
No. 226, Kotelawala, Kaduwela.

Petitioner

Vs.

1. Western Province Provincial Road
Passenger Transport Authority,
No. 89, 'Ranmagapaya',
Kaduwela Road, Battaramulla.
2. Prasanna Sanjeewa
Chairman,
Western Province Provincial Road
Passenger Transport Authority,
No. 89, 'Ranmagapaya',
Kaduwela Road, Battaramulla.
3. Jagath Perera
General Manager,
Western Province Provincial Road
Passenger Transport Authority,
No. 89, 'Ranmagapaya',
Kaduwela Road, Battaramulla.
4. Western Provincial Council
No. 204, Denzil Kobbekaduwa
Mawatha, Battaramulla.

5. A. M. S. Malkanthi
Deputy Chief Secretary,
Western Provincial Council,
No. 32. Sir Marcus Fernando
Mawatha,
Colombo 07.
6. Hon. Roshan Gonetilleke
Governor, Western Province,
No. 109, 5th floor,
Rotunda Tower, Galle Road,
Colombo 3.
7. K. Champa N. Perera
Secretary, Provincial Roads Transport,
Co-operative Development & Trade,
Housing and Constructions, Estate
Infrastructure Facilities, Industry and
Rural Development, Western Province,
No. 89, 'Ranmagapaya',
Kaduwela Road, Battaramulla.
8. National Transport Commission
No. 241, Park Road,
Colombo 05.
9. Shashi Welgama
Chairman,
National Transport Commission,
No. 241, Park Road,
Colombo 05.
10. Commander (Rtd) Nilan Miranda
Director General,
National Transport Commission,
No. 241, Park Road,
Colombo 05.
11. Hon. Attorney General
Department of the Attorney General,
Colombo 12.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : N. M. Riyaz with G. B. Madhushani Chandrika for the Petitioner.

Kapila Liyanagamage with Tharindi Karunaratne for the 1st, 2nd and 3rd Respondents.

Yuresha Fernando, DSG with Shemanthi Dunuwille, SC for the 4th to 11th Respondents

Supported on : 16.09.2022 and 21.09.2022

Decided on : 13.10.2022

Sobhitha Rajakaruna J.

The Petitioner is a company incorporated under the Companies Act No. 7 of 2007 in which eighteen members hold approximately 30 permits to ply the expressway within the Western Province. The Petitioner complains that the 1st Respondent has issued route permits outside the tender procedure which has caused great prejudice to the Petitioner.

The Petitioner in the instant application is seeking, inter alia, a mandate in the nature of a writ of Certiorari to quash a tender notice, marked 'P6', published on 30.07.2021.

The Petitioner states that the 8th Respondent is entitled to issue route permits in respect of the routes between Provinces and the 1st Respondent is entitled to issue passenger route permits in respect of routes within the Western Province.

The Petitioner contends that by letter dated 06.02.2022, marked 'P3' and letter marked 'P4', the Petitioner continuously complained to the 6th Respondent, among other matters, about issuing route permits outside the tender procedures by the 1st Respondent Authority and has requested the 6th Respondent to conduct an inquiry against the said 1st Respondent. Though such complaints were made, the Petitioner alleges that on 30.07.2021 by tender notice marked 'P6', the 1st Respondent wrongfully called for tenders in respect of various routes within the Western Province.

One of the main arguments of the Petitioner is that the said tender procedure has been conducted in a manner which violated the “State’s guidelines and practices and obligation on tender procedure”.

The Petitioner submits that calling of tenders by ‘P6’ by the 1st Respondent is wrongful, unreasonable, irrational and contrary to law due to several reasons such as;

- i. the purported tender is issued to fill an alleged shortfall but there is no shortfall in respect of omnibuses plying the expressway routes.
- ii. the routes that failed to perform after the previous tenders made in 2015, 2016, 2017 and/or 2018 are also included in the current tender.
- iii. new routes are included in the tender without any proper basis or justification.
- iv. the purported tender contains routes that ply within the expressway for a short distance and thereafter travel a longer distance over the highway which is contrary to the stated policy towards centralisation of expressway buses to the nearest entry and exist points of the expressway.
- v. the 1st Respondent has not even planned for the creation of bus stands on the routes advertised.
- vi. the purported tender includes provisions that infringe upon vested rights of the Petitioner and other route permit holders.

However, I take the view that the Petitioner has failed to establish prima facie any of the above grounds by way of material evidence. It is important to note that the vital stakeholders including relevant bus owners who would be affected by any order of this Court in the event the Petitioner will be saucerful in this application are not before Court.

Based on the circumstances of this application, I am of the view that there should be an abuse of power by the 2nd Respondent in exercising his duties, for the Petitioner to invoke the supervisory jurisdiction of this Court. It is observed that the Petitioner has not tendered adequate materials/evidence to exhibit that the 1st Respondent has breached the due process when publishing the tender notice marked ‘P6’.

When considering the date of the publication of the tender notice, it is evident that more than a period of one year has lapsed after the issuance of the said tender notice. Therefore, a question would arise on the maintainability of the instant application as the Petitioner is challenging only the tender notice marked ‘P6’. Further, the closing date for submitting

bids was on 20.08.2021, but the Petitioner has failed to inform this Court whether tenders have already been granted to any successful bidders. I take the view that even if the Court examines the substance of the alleged arguments of the Petitioner, the final result will be futile as the operational period of the impugned tender notice has come to an end on 20.08.2021.

On 03.06.2022, the Petitioner was permitted to file an amended Petition in order to circumvent any resistance to the maintainability of the application. However, the Petitioner has failed to file an amended Petition and accordingly has not taken prompt action to prosecute this application with due diligence.

As discussed by this Court in *Prof. D.G. Harendra de Silva & others vs. Hon. Pavithra Wanniarachchi Minister of Health & others, CA/Writ/422/2020 decided on 01.02.2022*, the judge needs to be satisfied that there is a proper basis for claiming judicial review, and it is wrong to grant permission without identifying an appropriate issue on which the case can properly proceed (See-*R vs. Social Security Commissioner ex p. Pattni (1993) 5 Admin LR 219 at 223G*). Thus, the Petitioner, in my view, has not made out an arguable case or a prima facie case for this Court to consider issuance of notice.

For the reasons set out above, I am of not inclined to issue formal notice of this application on the Respondents and I proceed to refuse this application.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal