

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

In the matter of an application for Writs in the nature
of Certiorari and Mandamus Under and in terms of
Article 140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

C.A. Writ Application No.
0491 / 2019

Vipul Manoj Bollagala,
No.558 / 2, Rammuthugala,
Kadawatha.

Petitioner

Vs.

01. Hon. Mangala Samaraweera
Minister of Finance,
Ministry of Finance,
The Secretariat,
Lotus Road, Colombo 01

1A. Hon. Mahinda Rajapakse,
Minister of Finance Economy and Police
Development, Ministry of Finance Economy
and Police Development, The Secretariat
Lotus Road, Colombo 01

1B. Hon. Basil Rajapakse,
Minister of Finance, Economy and Policy
Development, Ministry of Finance, Economy
and Policy Development,
The Secretariat, Lotus Road, Colombo 01.

02. Mrs. P.S.M. Charles, Director General, Sri
Lanka Customs, No 40, Main Street,
Colombo 11.

2A Major General (Retd.) Director General,
Sri Lanka Customs, No 40, Main Street,
Colombo 11.

2B W.L.D.R. De Alwis Director General, Sri
Lanka Customs, No 40, Main Street,
Colombo 11.

03. W.A.W. Fernando, Deputy Director of
Customs, Sri Lanka Customs, No, 40, Main
Street, Colombo 11.

04. W.M.R.P. Wijekoon,
Assistant Superintendent of Customs Sri
Lanka Customs, No, 40, Main Street,
Colombo 11.

05. Hon. Attorney-General,
Attorney General's Department,
Colombo 12.

Respondents

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Gamini Hettiarchchi for the Petitioner

Manohara Jayasinghe, SSC for all Respondent

Argued on: 14.02.2022

Decided on: 26.02.2022

S.U.B. Karalliyadde, J.

This Order is pertaining to the issuance of notices of the writ application to the Respondents. The facts of the application in a nutshell, are as follows;

The Petitioner purchased a chassis and body parts of a Land Cruiser jeep from a vehicle parts importer and assembled the vehicle. But it was not registered with the Department of Motor Traffic. Being the Minister of Finance, the 1st Respondent in his budget speech for the year 2016 announced that some of the vehicles which are being assembled in the country have not been registered with the Department of Mortar Traffic due to various reasons and urged to the owners of such vehicles to register the vehicles by 31st of March 2016 by paying a fee of Rs. 750,000/= for commercial vehicles and Rs. One million for motor cars (the budget proposal is marked as P-1 (a) and P-1 (b)). After the said budget proposal, the Petitioner made attempts to get registered his vehicle with the Department of Motor Traffic, but those attempts were failed. Then he made an attempt to get it registered at the Department of Motor Traffic through the Customs and on the instructions of the 4th Respondent who is an Assistant Superintendent of Customs, the vehicle was handed over to the Customs by a servant of the Petitioner. At the handing over the servant has given a statement to the Customs and thereafter, the Petitioner also has given a statement. Thereafter, the Petitioner was called for an inquiry by the Customs by letter dated 03.05.2019 marked as P-5 and the inquiry was held by the 3rd Respondent on 15.05.2019 (inquiry proceedings are marked as P-6). After the inquiry being held, the 3rd Respondent, by his Order marked as P-6 (a) forfeited the vehicle. In the Petition to his writ application dated 07.11.2019, the Petitioner has alleged that the Order of the 3rd Respondent to forfeit the vehicle is illegal, contrary to the law and procedures and against the principles of natural justice for the reason that by P-5 he has

been called by the Customs for the inquiry only to give evidence as a witness and he was not given an opportunity to call his evidence at the inquiry.

Against the Order of the 3rd Respondent marked as P-6(a), the Petitioner made an appeal in terms of sections 164 and 165 of the Customs Ordinance to the Minister of Finance, the 1st Respondent. Nevertheless, by letters dated 16.08.2019 marked as P-8 the 1st Respondent dismissed the appeal made by the Petitioner.

In the prayers to the Petition dated 07.11.2019, the Petitioner seeks writ of certiorari to quash the Orders marked as P-8 and P-10 and a writ of mandamus to compel the 1st Respondent to release the vehicle to the Petitioner on payment of Customs duty as demonstrated in the budget speech of the 1st Respondent. In the prayers to the Petition, the Petitioner has not sought a writ to quash the proceedings before the 3rd Respondent marked as P-6 and/or his Order marked as P-6(a) which the Petitioner allege illegal, contrary to the law and procedure and against the principles of natural justice. The document marked as P-8 which the Petitioner seeks to quash by way of a writ of certiorari is a letter sent by the 1st Respondent to the Petitioner informing him that the appeal made by him was rejected. Therefore, even if the Court issue a writ of certiorari to quash P-8, the Order marked as P-6(a) will stand and no purpose will be served by issuing a writ to quash the decision containing in the document marked as P-8. Even though, the Petitioner has prayed for a writ of certiorari to quash an Order marked as P-10, neither produced such Order to Court nor mentioned about such an Order in the Petition.

The Petitioner also has sought a writ of mandamus on the premise of the budget speech for the year 2016 made by the 1st Respondent being the Finance Minister. Nevertheless, there is no material before the Court that any circular has been issued or any law has

been passed to give effect to the budget proposal of the 1st Respondent containing in the documents marked as P-1(a) and P-1(b). Therefore, the Petitioner is not entitled to a writ of mandamus as sought in the Petition.

Under the above stated circumstances, I hold that the Petitioner is not entitled to the reliefs sought in the Petition dated 07.11.2019. Therefore, the Court refuses to issue notices formally on the Respondents. Accordingly, the Application is dismissed. No costs.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL