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

In the matter of application, under and in terms of Article 140 of the Constitution for mandates in the nature of Writs of Certiorari and Prohibition.

Kuruwitage Don Marlin Minura Siriwardena

No. 50 1/1, Ambatale,

Mulleriyawa New Town.

Case No: CA/Writ 64/2021

PETITIONER

Vs.

1. Ceylon Petroleum Corporation
   No. 609, Dr. Danister De Silva Mawatha,
   Colombo 09.

2. W. W. D. Sumith Wijesinghe
   Chairman and Board Member,
   Ceylon Petroleum Corporation,
   No. 609, Dr. Danister De Silva Mawatha,
   Colombo 09.

3. Buddhika Ruwan Madihahewa
   Managing Director and Board Member,
   Ceylon Petroleum Corporation,
   No. 609, Dr. Danister De Silva Mawatha,
   Colombo 09.

4. R. M. D. K. Rathnayake
   Director,
   Ceylon Petroleum Corporation,
   No. 609, Dr. Danister De Silva Mawatha,
   Colombo 09.

5. Tharindu Hashan Eknathgedara
   Director,
   Ceylon Petroleum Corporation,

No. 609, Dr. Danister De Silva Mawatha,
Colombo 09.

6. Chaminda Hettiarachchi
   Director,
   Ceylon Petroleum Corporation,
   No. 609, Dr. Danister De Silva Mawatha,
   Colombo 09.

7. Buddhika Iddamalgoda
   Director,
   Ceylon Petroleum Corporation,
   No. 609, Dr. Danister De Silva Mawatha,
   Colombo 09.

8. Thilanga Nadeera Polwatta
   Director,
   Ceylon Petroleum Corporation,
   No. 609, Dr. Danister De Silva Mawatha,
   Colombo 09.

9. Hon. Udaya Prabath Gammanpila
   Minister of Energy,
   Minister's Office, Ministry of Energy,
   No. 80, Sir Earnest de Silva Mawatha,
   Colombo 07.

9A. Hon. Kanchana Wijesekera

Minister of Power,

Ministry of Power,

No. 437, Galle Road, Colombo 3.

10. B. S. Cooray
    No. 1/215, Udumulla,
    Mulleriyawa.

RESPONDENTS

Before : Sobhitha Rajakaruna, J.

Dhammika Ganepola, J.

Counsel:	:	Shanaka Amarasinghe with Shaveen Perera for the Petitioner. Nayomi Kahawita, S. C. for the 1St to 4th and 6th to 9th Respondents. Ashan Stanislaus for the 10th Respondent.
Argued On	:	21.10.2022.
Written Submission	:	Tendered on behalf of the Petitioner 11.07.2023 Tendered on behalf of the 10th Respondent 22.08 .2023
Decided On	:	05.09.2023.

Dhammika Ganepola, J.

The Petitioner operates a filling station at No.50 1/1, Ambatale, Mulleriyawa New Town under the dealership agreement[P1b] with the 1st Respondent. Said dealership agreement runs from November 2015 to 26 July 2032. The Petitioner states that he has made a substantial investment and purchased appreciable volumes of petroleum products from the 1st Respondent Corporation under the said dealership agreement. On or about 22 October 2020, the Petitioner had come to know that the construction of a new filling station has begun at No.330, Sedawatta, Ambetale Road and No. 339-340, Orugodawatta, Ambetale Road, which together constitute one premises owned by the 10th Respondent. Said premises is said to be located 459 meters away from the Petitioner's filling station. The Petitioner further states that he verily believes that the 10th Respondent has been given or is imminent to be given a dealership by the 1st Respondent to operate a filling station at the said premises. It is claimed that unless the 10th Respondent has been informed that the Board of Directors of the 1st Respondent has decided to grant written approval to the 10th Respondent to operate such a filling station, the 10th Respondent would not have begun the construction of the said filling station.

The Petitioner claims that based on the following reasons any such approval by the Board of Directors of the 1st Petitioner Corporation to permit the 10th Respondent to sell, supply or distribute petroleum products or enter into any dealership agreement with the 10th

Respondent is illegal, unreasonable, and is in gross violation of the Petitioners legitimate expectations and rule of Law:

- As a general practice, the 1st Respondent Corporation does not grant a dealership if the filling station is to be set up within a 3 km radius of a filling station of an existing station except in exceptional circumstances which cannot be established in the instant case;
- The Petitioner faces the danger of its sales drastically reducing and being compromised due to the operation of the impugned filling station by the 10th Respondent without any justifiable reason and against the expectation that the 1st Respondent would not set up another dealership station in such close proximity;
- The remaining 11 years period in the dealership agreement would be grievously affected and severely undermined by the setting up of the impugned filling station by the 10th Respondent violating the Petitioner's expectations that his dealership would not be frustrated by at least until 26.07.2032 i.e. end of the dealership agreement;
- Setting up another filling station in such close proximity to the Petitioner's filling station would drastically affect the sales targets of the Petitioner pertaining to the lubricants.

The Petitioner further claims that the decision of the Board of Directors of the 1st Respondent to grant approval to the issuance of a dealership to the 10th Respondent appears to have been influenced by a potential conflict of interest, as the 5th Respondent who is the son of the 10th Respondent is a member of the aforesaid Board of Directors.

In these circumstances, the Petitioner seeks writs of certiorari to quash any written authority granted to the 10th Respondent by the 1st to 8th Respondents to operate a filling station at the above premises and to quash any dealership agreement entered into with the 10th Respondent and writs of prohibition restraining the above Respondents from entering into a dealership agreement with the 10th Respondent to operate a filling station and engaging in the business at the above premises.

The 1st to 8th Respondents admit that the board approval has been granted to the 10th Respondent to operate the impugned filling station and the land in which the said filling station is to be constructed is in proximity to the filling station operated by the Petitioner. The said Respondents further submit that:

- the 1st Respondent has the discretion and the lawful authority to decide the location in which a filling station could be operated;
- there exists no rules or regulations that stipulate a minimum distance to be maintained between two filling stations;
- the high volume of traffic in the area, volumes of sales and the demand for fuel in the area in which the filling station is operated by the Petitioner are the relevant considerations that were taken into consideration prior to arriving at the decision to grant approval to the 10th Respondent to operate the impugned filling station in the proximity of the Petitioner's filling station.

The 10th Respondent takes up the position that the Petitioner's application forms part of a commercial transaction entered into between the 1st Respondent and the Petitioner and as such, it is unreasonable for the Petitioner to seek orders to prevent the 1st Respondent from entering into a similar agreement with the 10th Respondent. The 10th Respondent admitted to having been authorized through a letter marked 10R1 to establish a filling station in Ambathale and the construction has been finalized. Accordingly, all Respondents move this Court *inter alia* to dismiss the Application of the Petitioner.

Relevant grounds to be taken into Close Consideration in Deciding Upon the Commencement of a New Filling Station

The Petitioner's main contention is that the 1st Respondent has violated the general practice of not granting a dealership for a filling station to be set up within 3 km radius of an existing one, by granting the 10th Respondent the approval to operate the impugned filling station. Therefore, first and foremost this Court has to look into whether there are any existing rules and/or regulations relating to the minimum distance to be maintained between two filling stations.

Initially the 1st to 8th Respondents have taken up the stand that there are no rules or regulations which stipulate a minimum distance between two filling stations. (*vide* paragraph 18(c) of the objections). I am in agreement with the stance of the Respondents that there are no rules and regulation that needs to be adhered to by the Respondent in deciding upon the minimum distance to be maintained between two filling stations. However, I am of the view that the distance between the filling stations is not an irrelevant consideration that needs to be taken into consideration in deciding upon whether a person should be granted the approval to operate a new filling station or not. In response to the said stance, the Petitioner by his Counter-Affidavit has submitted a Marketing Manual issued by the 1st Respondent (P12), Letter dated 05 February 2015 issued by the Chairman/Managing Director (P13) and the Direction dated 15 April 2019 issued by the Acting Manager (Sales) (P14) and claims that in view of the said documents distance between two filling stations should be taken into close consideration in determining upon the grant of approval to operate a new filling station.

The document P14 is a Direction issued by the Acting Manager (Sales) to all Regional Managers of the 1st Respondent. Upon perusal of P14, it appears that the said Direction provides the criteria to be taken into close consideration in recommending a commencement of a new filling station. The Respondents at no point had challenged the validity of the said Direction P14. There is no material before this court to hold that the said Direction P14 had been invalidated or abrogated at the time relevant to the issue in the instant case. As such, I am of the view that the criteria provided under P14 are valid considerations that are required to be considered in recommending the commencement of a new filling station by the respective Regional Manager.

As per paragraphs 2 (*a) to (f) of* Direction P14 average sales of the proposed location, the high volume of traffic in the area, the current and estimated population, sales volumes reported from nearby filling stations, future development plans of the area, the importance of having a filling station in the area and minimum distance of 5km or if it is within urban limits 3km distance, by both sides of the proposed filling station etc should be closely considered by the Regional Managers of the 1st Respondent, when new filling stations are recommended. As per the Direction P14, a minimum distance of 5km, or a distance of 3km within urban limits, has to be maintained between two filling stations. It is on the common ground that the 10th Respondent's filling station is situated less than 3km (459 meters) away from the Petitioner's filling station which is located within the said restricted limit. Upon a perusal of the Report R9 it appears that the Regional Manager of the 1st Respondent has considered all the said requirements set out in paragraphs 2 (*a) to (f)* of the Direction P14 including the requirement of the distance between existing filling stations. Nevertheless, the Regional Manager of the 1st Respondent has made the observation in paragraph 7(c) of his Report R9, '*the distance between existing filling stations is not satisfied*.'

However, the Marketing Manager who had submitted the Board Paper (R10(a)) relating to the grant of impugned approval has omitted the said observations of the Regional Manager in respect of the distance between existing filling stations. As such it appears that the said observations of the Regional Manager of the 1st Respondent regarding the distance factor ('*the distance between existing filling stations is not satisfied*') had not been given any consideration at all by the Board of Directors. If said factor had been given due consideration it would have been mentioned in the Board Paper marked R10(a). This Court observes the person who prepared the Board Paper R10(a) is one W. D. L. C. Abeygunawardena, the Acting Marketing Manager of the 1st Respondent is the same person who issued the Direction P14 which contains criteria for commencing of new filling stations. Hence, this Court cannot accept the position that said Acting Marketing Manager was unaware of the importance of the distance between the two filling stations when comes to the decision of granting approval for a new filling station.

The Respondents state in their statement of objections that the factors of average sales of the proposed location, the high volume of traffic in the area, the current and estimated population, and sales volumes reported from nearby filling stations, including the Petitioner's filling station have only been considered in granting of the dealership to the 10th Respondent. However, the distance between the nearest filling stations had not been considered. It also implies that due attention had not been given to the 'distance factor' in arriving at the impugned decision. I am of the view that the Board of Directors are obliged to consider all the factors including the 'distance factor' in arriving at the correct decision to grant approval for the commencement of a new filling station. It is imperative that all pertinent viewpoints, including those of the Regional Manager, are considered during the decision-making process. Nonetheless, the decision-maker is not at liberty to select the criteria to be considered depending on each case.

Harry Woolf, Katherine Donelly, Ivan Hare, De Smith's Judicial Review, [8th Edition 2018] Smith Maxwell, Page 305 states,

> *"When exercising a discretionary power, a decision maker may take into account a range of lawful considerations. Some of these are specified in the statute as matters to which regard may be had. Others are specified as matters to which regard may not be had. There are other considerations which are not specified but which the decision maker may or may not lawfully take into account. If the exercise of discretionary power has been influenced by considerations that cannot lawfully be taken into account, or by the disregard of relevant considerations required to be taken into account (Expressly or Impliedly), a court will normally hold that the power has not been validly exercised…"*

It was held in *Girling v. Secretary of State for the Home Department [2006] EWCA Civ 1779*, paras 27,28.," The *decision-maker must take the relevant obligatory considerations into account and if he fails to do so judicial review court will set him right. But the weight to be attached to any consideration is a matter for the decision maker*."

Neglecting the significance of the "distance factor" could result in an incomplete analysis and a suboptimal decision. It is imperative to ensure that all relevant factors have been fully considered to reach the best possible outcome. The Board of Directors have not provided a valid justification for their lack of consideration of the said relevant fact. Where a statutory body or tribunal fails to take account of relevant considerations or takes into account irrelevant considerations which materially affected the decision reached, such statutory body or tribunal may be held to be act in ultra-vires.

Nevertheless, I am of the view that there is no bar to disqualify one of the factors including the distance factor depending on the attendant circumstances of each case. What is important is to follow the due procedure and justify the decision by giving sufficient reasons. If the due administrative process has not been followed and such public authority has deviated from the established guidelines without any justification such public authority should be considered as having acted *ultra vires*. This court has constantly observed that judicial review is about the decision-making process, not the decision itself. The role of this court in judicial review is supervisory. Therefore, it is not for this court to consider whether the decision of the public authority is right or wrong, but the role of this court is to consider whether the public authority has exceeded its powers by failing to adhere to due procedure and take into account relevant factors. (See ***Nagananda Kodithuwakku vs. Dinesh Gunawardene Minister of Education and Others CA/WRIT/45/2022, Decided on 03.02.2022***).

However, the Respondents in an attempt of justifying their decision claim that the 1st Respondent has regularly approved the operation of filling stations in close proximity depending on the attendant circumstances and the volume of sales. In support of his contention, the Respondents illustrated many instances where filling stations operated nearby at Mawanella, Wewaldeniya, Meegoda and Karandeniya areas. Upon perusal of the relevant documents [R1(a), R1(b), R2(a), R2(b) and R5 to R8] tendered by the Respondents it is quite clear that those dealerships were awarded well before the introduction of said

minimum distance limitation regulation under Direction P14. It appears that the dealerships related to documents R4(a) and R4(b) were granted nearly within a month. The Petitioner states that it is likely the approval process for both dealerships would have occurred simultaneously without causing inconvenience to the dealers. It is observed that dealerships dealing with documents R3(a) and R3(b) are within restricted distance limits similar to the instant application. However, this court is not in a position to ascertain whether there had been any objections from the respective dealers pertaining to the approval of the above-illustrated dealerships. The mere failure of the proximate competitors to assert their rights does not estop the Petitioner from asserting his legitimate rights based on the procedure set out under Direction P14.

Respondent's Public Duty Owed to the Petitioner

The 1st to 8th Respondents claim that the Petitioner failed to disclose a public duty owed by them to the Petitioner. The bodies performing public duties or exercising powers that may well be characterized as 'public 'may be subject to judicial review. It is noteworthy to refer to the definition given to the word 'public' in the case of ***Lanka Securities (Pvt) Ltd v. Colombo Stock Exchange and Others [2020] 2 Sri LR 121 at 125*** where it was held that the bodies performing public duties or exercising powers that may well be characterized as 'public' may be subject to judicial review in respect of those powers and duties even when they are not statutory or prerogative.

Clive Lewis, Judicial Remedies in Public Law,5th Ed., page 49 *states;*

> *Two definitions of 'public' can be discerned in the Datafin Case. First, there is the extent to which the body operates under the authority of the government or was established by the Government or, presumably, by some other recognized public authority. Secondly is performed against a background of statutory powers even though there is no specific statutory or prerogative authority for the power which is sought to review. Both these approaches involve some link between the Government or the legislature, and the body in question…the current approach of the courts is to consider whether the body is woven into the fabric of public regulation or governmental control of an activity or is integrated into a system of statutory regulation, but for its existence, a governmental body would have assumed control over the activity regulated by the body under challenge."*

The 1st Respondent is a fully State-owned public Corporation established under the Ceylon Petroleum Corporation Act No. 28 of 1961 and operates under the government's authority. According to the provisions under the Act, the State is the sole shareholder of the 1st Respondent Corporation. If the 1st Respondent fails to make profits, the Treasury will have to provide funds for the 1st Respondent. In the circumstances, the 1st Respondent has a statutory and public duty to adhere to principles of good governance and act in a transparent manner in its functions. Further, as mentioned above, the impugned acts of the Respondents had been performed against a background of statutory powers even though there is no specific statutory or prerogative authority for the power which is sought

to be reviewed. Additionally, the guidelines set out under the Marketing Manual P12 and Direction P14 further substantiate the public nature of the duty performed by the 1st Respondent Corporation. Accordingly, the 1st Respondent who took the impugned administrative decision is a public body and such decision has been arrived at while performing its duties against a background of statutory powers even though there is no specific statutory or prerogative authority for the power which is sought to review. As such, I am of the view that Respondents have a public duty owed to the Petitioner.

Discretion of the 1st Respondent

The 1st to 8th Respondents claim that the 1st Respondent has sole authority to decide on the granting of the dealership for the sale of petroleum products in terms of Section 5E of the Act. They further claim that the said decision is a collective decision of the Board of Directors of the 1st Respondent based upon consideration of all relevant factors including average sales of the proposed location, high volume of traffic in the area, the present and estimated population and the sales volumes reported from nearest filling stations including the Petitioners filling station.

Even though the Respondents claim that the 1st Respondent has sole authority to grant the dealership such an authority cannot be considered as unfettered or absolute. Said discretion has to be exercised with the parameters of the law considering all relevant factors and should be able to be justified. ***Wade and & Forsyth, in Administrative Law 11th Ed., page 295 states,***

> *"Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely- that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended.*

In ***Gunaratna and Others v. Ceylon Petroleum Corporation and Others [supra] at 325*** Supreme Court observed that *'it is now well settled that powers vested in the State, public officers, and public authorities are not absolute or unfettered, but are held in trust for the public, to be used for the public benefit, and not for improper purposes.'*

In ***Heather Therese Mundy v. Central Environmental Authority (SC appeal 58/2003; SC Minutes of 20th January 2004)***, the Supreme Court observed that;

> "*The jurisdiction conferred by article 140, however, is not confined to 'prerogative ' writs or 'extraordinary remedies', but extends subject to the provisions of the Constitution' to orders ' in the nature of ' writs of certiorari, etc. taken in the context of our Constitutional principles and provisions, these 'orders' constitute one of the principal safeguards against excess and abuse of execute power; mandating the judiciary to defend the Sovereignty of the people enshrined in Article 3 against infringement or encroachment by the Executive, with no trace of any deference due to the crown and its agents. Further, this Court itself has long recognized and*

applied the 'public trust' doctrine: that powers vested in public authorities are not absolute or unfettered but are held in trust for the public, to be exercised for the purposes for which they have been conferred, and that their exercise is subject to judicial review by reference to those purposes. (see De Silva v. Atukorale [1993] 1 Sri LR 283 at 296-297, Jayawardena v. Wijethilake [2001] 1 Sri LR 132 at 149-159, Bandara v. Premachandra [1994] 1 Sri LR 301 at 312).

Therefore, although the 1st Respondent Corporation has been granted the sole authority in approving dealerships such an authority cannot be considered as unfettered or absolute.

Granting of dealership agreement is tainted with bias.

The Petitioner argues that the relationship between the 5th Respondent, a member of the board of directors, and the 10th Respondent, taints the dealership agreement entered between the 1st Respondent and the 10th Respondent due to personal bias. The Petitioner believes that the 10th Respondent is the mother of the 5th Respondent. The petitioner submitted a publicly available document marked as P15, which is a 'Form 20' related to S&K Engineering Enterprises (Private) Limited showing a change of director/secretary positions and particulars of director/secretary in support of the close connection between the 5th and 10th Respondents. According to the said document P15, both the 5th and 10th Respondents are listed as directors of the company and share the same address. The 10th Respondent conceded the existence of such a relationship during the argument. Even the 1st to 8th Respondents do not deny the existence of such a relationship. However, the 1st to 8th Respondents state in their statement of objections that the 1st Respondent was not aware of such a relationship. I am of the view that making such a statement appears to be imprecise and careless, when the 5th Respondent is holding a directorial position in the Board of Directors of the 1st Respondent and having a statutory disqualification to continue as a director and by the fact itself to hold office with such interest in terms of the Section 8(2) of the Ceylon Petroleum Corporation Act No. 28 of 1961(as amended). Said Section is as follows,

8 (2) A person shall be disqualified from being appointed or continuing as a Director and in that event shall ipso facto cease to hold office,

(a) if he is a Senator or a Member of Parliament, or

(b) if he, directly or indirectly, by himself or by any person on his behalf or for his use or benefit, holds or enjoys any right or benefit under any contract other than a contract of employment made by, with or on behalf of the Corporation, or

(c) if he has any such financial or other interest except as an employee of the Corporation as is likely to affect prejudicially the discharge by him of his functions as a Director.

It is of utmost importance for a director to disclose his interests, if any, in respect of a matter to be decided by the Board of Directors including himself. Failure to do so may imply a lack of honesty and sincerity on the part of the 5th Respondent and the only inference that could be drawn is the 5th Respondent's bad faith.

Section 10A of the Ceylon Petroleum Corporation Act No. 28 of 1961(as amended) specifies the duty of a Director when he has an interest in a contract proposed to be made by the Corporation.

> *10. A Director who is directly or indirectly interested in a contract proposed to be made by the Corporation shall disclose the nature of his interest at a meeting of the Board of Directors. The disclosure shall be recorded in the minutes of such Board, and such Director shall not take part in any deliberation or decision of such Board with respect to such contract.*

Said Sections 8(2) and 10 of the Act divulge the gravity and seriousness of a Director taking part in the deliberation or decision-making process having an interest in a contract proposed to be made. Accordingly, the correct procedure to be followed when a contract is proposed to the Board of Directors that directly or indirectly interests a Director/s such party must disclose the nature of his interest and withhold from partaking in such decision.

The existence of a relationship between the 5th Respondent and the 10th Respondent could influence the decision-making process of the 1st Respondent in favour of the 10th Respondent. The failure to give due consideration to the requirement of the minimum distance between existing filling stations when considering the grant of approval for the operation of the impugned filling station by the 10th Respondent, by the Board of Directors of the 1st Respondent has to be considered under such circumstances. In view of the reasons above, it is apparent that the impugned decision of the 1st Respondent is tainted with bias. The bias can be described as the presence of prejudice which has an influence on the decision-making process.

Since the impugned decision is tainted with bias and since the Respondents have failed to take into consideration the relevant factors, I am of the view that the Respondents have failed to duly exercise their discretion.

Petitioner's Locus Standi to Maintain the Action

It is on the common ground that the Petitioner has a dealer agreement(P2b) entered into with the 1st Respondent valid until 27.07.2032. In terms of said agreement, the Petitioner has been appointed as a dealer of the 1st Respondent to sell, supply and distribute petroleum products at the premises described therein. The Petitioner is responsible for the quantities of petroleum products sold and is entitled to a commission of 3% as the distributor of the 1st Respondent. Hence any decision to approve another new dealership

within close proximity of the Petitioner's filling station would affect his business. Said situation may cause prejudice to the Petitioner whose rights and interests have been affected. As the Petitioner could be considered as an affected party of the impugned decision, I hold the view that the Petitioner who has sufficient interest in the matter holds *locus standi* to invoke the writ jurisdiction of this court under the instant Application.

Commercial transaction

The 10th Respondent has taken up a preliminary objection that the matter in issue under the instant application has arisen out of a commercial or contractual transaction between the 1st Petitioner and the 1st Respondent.

In ***Gunaratna and Others v. Ceylon Petroleum Corporation and Others [1996] 1SLR 315 at 324*** Supreme Court held that *the grant of authority under section 5E is plainly a statutory function. A dealership agreement is not a distinct, or severable, matter, but intimately connected with that authority. Indeed, it seems to be referable to section 5F that entering into such agreements and granting such authority - and cancelling them - cannot be regarded as purely commercial decisions in commercial transactions: it constitutes executive or administrative action.*

The decision sought to be quashed by the Petitioner was made by exercising the statutory authority conferred upon the board of directors under the Ceylon Petroleum Act and thus constitutes an administrative decision. Further, the alleged breach of public duty does not arise from the contract between the 1st Petitioner and the 1st Respondent. Therefore, the decision in question is entirely within the purview of the writ jurisdiction of this court.

Although the general proposition is that the matters arising solely out of a contract that comes within the ambit of the private contractual law are not subject to judicial review, this Court has recognized the jurisdiction of the Court of Appeal in a broader sense. The Court of Appeal has a discretionary power to exercise its writ jurisdiction even on a question arising out of the private contract if such order of a public authority was in breach of statutory duty and also if a public authority has taken a decision assuming a jurisdiction which it does not have or exceeding its jurisdiction by violating a statutory requirement which eventually comes under any of the established grounds of judicial review. (*Also see* ***Vithanage Vajira Kelum Perera V. Sudath Rohana, Chairman ITN and Others CA/WRIT/508/2021 decided on 29.08.2023, W. G. Chamila v. Urban Development Authority and Others CA/WRIT/215/2022 decided on 26.10.2022 and Devendra Budalge Sudesh Lalitha Perera V. Janatha Estates Development Board and Others CA/WRIT/004/2022 decided on6.10.2022****). As there has been a clear breach of statutory duty, the Petitioner* in the instant application *is entitled to seek relief through a writ application before this Court.*

The 10th Respondent submits that the Petitioner is precluded from seeking exclusivity within any geographical area as per Clause 1 of Dealer Agreement P1[b]. Anyhow the Petitioner

has not claimed the reliefs prayed for in the Petition based on any exclusivity rising out of the *Dealer Agreement P1[b]* but instead argues based on a breach of a public duty.

Conclusion

Due to the foregoing reasons, I am of the view that the 1st to 8th Respondents have failed to take relevant factors into account; failed to comply with the statutory duty of acting in good faith and failed to exercise fettered discretion in arriving at the impugned administrative decision. I hold that the decision (10R1) of the 1st Respondent to the 10th Respondent to set up a dealer-owned filling station has not been made in accordance with the applicable law and such Respondents have failed to follow due process. Therefore, I hold that the Petitioner is entitled to the relief claimed in the prayer (b) of the prayer of the petition. Further I take the view that any agreement entered into between parties consequent to such decision cannot be considered as binding in law. In view of the way the prayers (c) and (d) of the prayer of the petition are formulated, I am not inclined to issue writs of Prohibition as prayed for. Therefore, my above findings should not be an impediment for the 10th Respondent to submit a lawful application for consideration by the Board of Directors of the 1st Respondent. I order no cost.

Application is partly allowed.

Judge of the Court of Appeal

Sobhitha Rajakaruna J.

I agree.

Judge of the Court of Appeal