

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

*In the matter of an Application for a
mandate in the nature of Writ of
Certiorari in terms of Article 140 of
the constitution*

C A (Writ) Application No. 31/ 2013

A Base Mechfarms (Pvt) Limited,
No. 62,
Main Street,
Battaramulla.

PETITIONER

-Vs-

1. Consumer Affairs Authority,
1st and 2nd Floor,
C W E Secretariat Building,
PO Box 1581,
27,
Vauxhall Street,
Colombo 02.
2. The Chairman,
Consumer Affairs Authority,
1st and 2nd Floor,
C W E Secretariat Building,
PO Box 1581,
27,
Vauxhall Street,
Colombo 02.
3. The Director General,
Consumer Affairs Authority,

1st and 2nd Floor,
C W E Secretariat Building,
PO Box 1581,
27,
Vauxhall Street,
Colombo 02.

4. Milton Amarasinghe,
Executive Director,
Consumer Affairs Authority,
1st and 2nd Floor,
C W E Secretariat Building,
PO Box 1581,
27,
Vauxhall Street,
Colombo 02.
- 4A. Ruwan Lankeshwara,
Executive Director,
Consumer Affairs Authority,
1st and 2nd Floor,
C W E Secretariat Building,
PO Box 1581,
27,
Vauxhall Street,
Colombo 02.
5. Maj. Gen. N. Jayasuriya,
Executive Director,
Consumer Affairs Authority,
1st and 2nd Floor,
C W E Secretariat Building,
PO Box 1581,
27,
Vauxhall Street,
Colombo 02.
- 5A. M L Thulkar Nayeem,
Executive Director,
Consumer Affairs Authority,
1st and 2nd Floor,

C W E Secretariat Building,
PO Box 1581,
27,
Vauxhall Street,
Colombo 02.

6. Sunil Jayaweera,
Executive Director,
Consumer Affairs Authority,
1st and 2nd Floor,
C W E Secretariat Building,
PO Box 1581,
27,
Vauxhall Street,
Colombo 02.
- 6A. H M Rushdie,
Executive Director,
Consumer Affairs Authority,
1st and 2nd Floor,
C W E Secretariat Building,
PO Box 1581,
27,
Vauxhall Street,
Colombo 02.
7. Waruna Allawwa,
Member of the Authority,
Consumer Affairs Authority,
1st and 2nd Floor,
C W E Secretariat Building,
PO Box 1581,
27,
Vauxhall Street,
Colombo 02.

8. L A L R Liyanaarachchi,
No. 52,
411/2,
Nawatheldeniya,
Galadivuwewa

RESPONDENTS

Before: Vijith K. Malalgoda PC J (P/CA)

P. Padman Surasena J

Counsel: Sandamal Rajapaksha for the Petitioner

Vikum de Abrew, DSG for the State

Argued on: 2016-03-01

Decided on: 2016-04-27

JUDGMENT

P Padman Surasena J

Petitioner is a company engaged in importing, distributing and selling agricultural equipment within the country and is the sole agent for "Sinoha Harvester" which is a branded product imported from the People`s Republic of China and sold within Sri Lanka through its dealer

network. This machine is used for the purposes of mass scale harvesting of paddy.

The Petitioner on being paid Rs. 800,000/- out of the total price of Rs. 2.4 Million released a harvester on or about 2010-09-02 to the 8th Respondent on the understanding that the 8th Respondent will take steps to pay the balance of its value which is Rs. 1.6 Million by way of lease facility obtained through a financial institution.

It is the position of the Petitioner that

- I. the 8th Respondent used this harvester during the Maha season of 2010 and Yala season of 2011.
- II. the 8th Respondent defaulted payment
- III. the Petitioner hence ceased the said harvester from the possession of the 8th Respondent
- IV. statements were recorded by Kurunegala Police from both the agent of the 8th Respondent and the agent of the Petitioner.

Thereafter as the 8th Respondent had lodged a complaint, the 1st Respondent has held an inquiry in terms of section 13(1) of the Consumer Affairs Authority Act. 1st Respondent subsequent to that inquiry had ordered the Petitioner to pay Rs. 500,000/- out of the total amount of Rs. 800,000/- he had deposited, back to the 8th Respondent. This has been done on the basis that the Petitioner had not taken steps to maintain the said harvester during the period covered by the warranty given on the harvester by the Petitioner. It is this decision that is being challenged by the Petitioner in these proceedings.

The argument advanced by the learned counsel for the Petitioner is that the complaint of the 8th Respondent is a complaint made after the specified time period provided for in Section 13(2) of the Act for making such complaints and hence the 1st Respondent has acted outside the scope of his power.

However, as pointed out by the learned Deputy Solicitor General, the Petitioner has at no stage during the inquiry denied the existence of a warranty period for this harvester. Hence, it is the submission of the learned Deputy Solicitor General that Section 13(2) must be given a purposive interpretation. He relied on a judgment of this court in David Peiris Vs. Consumer Affairs Authority C A Application No. 635/ 2007 (Writ) decided on 2009-08-03.

According to Section 13 (2) a complaint under subsection (1) which relates to the sale of any goods or to the provision of any service shall be made to the authority in writing within 3 months of the sale of such goods or the provision of such service, as the case maybe.

If Section 13 (2) is to be interpreted strictly giving a literal meaning to its words, then that Section will prevent a consumer who has purchased a good or service with a warranty or guarantee with a longer period than 3 months, from lodging a complaint relating to such purchase after 3 months of its purchase. In other words such consumer can lodge a complaint in relation to such goods or services only if something goes wrong during the first 3 months period of the warranty or guarantee he has received. This is despite of the fact that he still holds a valid warranty or guarantee for a longer period than 3 months. The resultant position of such a strict Interpretation would be inevitably that no

consumer would be able to enjoy any warranty or guarantee for a period exceeding 3 months. It was in this backdrop that this court was called upon to adjudicate this issue.

It is therefore appropriate at this stage to examine as to what the legislature intended by promulgation of this Act.

When one looks at the preamble of the Act, it becomes clear that this is an Act to provide for the establishment of the Consumer Affairs Authority for the promotion of effective competition and the protection of consumers and for the regulation of internal trade etc. The scope of an Act and the mischief which is to be remedied through that Act is generally stated in its preamble and hence, the preamble could be of some assistance to ascertain what the legislature intended to do by bringing that Act.

While Section 2 of the Act has established the Consumer Affairs Authority, Section 7 sets out objects of the authority. As per Section 7 objects of the authority shall be:

- a. to protect consumers against the marketing of goods or the provision of services which are hazardous to life and property of the consumers.
- b. to protect consumers against unfair trade practices and guarantee that consumers' interests shall be given due consideration.
- c. to ensure that wherever possible, consumers have adequate access to goods and services at competitive prices. And,

- d. to seek redress against unfair trade practices, restrictive trade practices or any other forms of exploitation of consumers by traders.

Section 13 which is a section in part II of the Act which deals with the regulation of trade, has conferred power on the authority to inquire into complaints regarding the manufacture or sale of any goods which do not conform to the warranty or guarantee given by implication or otherwise by the manufacturer or trader.

A closer examination of the above provisions amply demonstrate that the legislature by promulgation of this Act intended to protect the consumers in their day to day engagements in purchases and to provide redresses if and when any such injustice occur. Thus, as has been shown before, literal interpretation of Section 13 (2) would only enable a trader to breach with absolute impunity, a warranty or guarantee that he provides on his own volition, to the consumers. It cannot be said with any yardstick that it has been the intention which the legislature entertained when it passed this Act.

This court in David Peiris Motor Company Ltd Vs. Consumer Affairs Authority, (Supra) having analyzed these provisions has held that Section 13 (2) must be given a purposive interpretation. This court in that case has held as follows:

"...Section 13 (2), must be given a purposive interpretation. If a warranty of goods covers for a period of two years and the purchaser can only complain within 3 months of the purchase of the goods in relation to the breach of a warranty or guarantee; it will lead to absurdity and the protection given by Section (1) (b) would be rendered

nugatory. Section 13 (2) has imposed a 3 months limitation for complains only in relation to the sale of any goods or to the provision of any service which does not conform to the standards and specifications determined under Section 12..."

Thus, it is clear that this has been the consistent thinking of this court.

For the foregoing reasons the argument advanced by the learned counsel for the Petitioner that the Consumer Affairs Authority does not have power to entertain the instant complaint, must necessarily fail.

Hence, this application is refused. It should stand dismissed. We make no order for costs.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL