

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

In the matter of an Application under Article
140 of the Constitution for a mandate in the
nature of Writ of Mandamus.

JF Tours & Travels (Ceylon) (Pvt.) Ltd,
No. 189, Bauddhaloka Mawatha,
Colombo 04.

PETITIONER

Court of Appeal Case No:
CA/WRIT/23/25

Vs.

1. J.I.D. Jayasundara,
General Manager,
Sri Lanka Railways,
Sri Lanka Railways Headquarters,
Olcott Mawatha, Colombo 10.
2. W.D. Ranjith Pathmalal,
Deputy General Manager (Commercial),
Sri Lanka Railways,
Sri Lanka Railways Headquarters,
Olcott Mawatha, Colombo 10.
3. N.J. Indipolage,
Deputy General Manager (Transportation),
Sri Lanka Railways,
Sri Lanka Railways Headquarters,
Olcott Mawatha, Colombo 10.
4. Chief Engineer,
Sri Lanka Railways,
Sri Lanka Railways Headquarters,
Olcott Mawatha, Colombo 10.

5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Theekshana Pathirana instructed by Dilhara Arachchige for the
Petitioner.
M. Amerasinghe, SSC for the Respondents.

Supported on: 06.02.2025

Decided on: 28.03.2025

Mayadunne Corea J

The Petitioner seeks the following reliefs.

“(d) Grant an order in the nature of a writ of Mandamus directing the 1st Respondent, and/or one or more of the 2nd – 4th Respondent’s acting under the 1st Respondent to honor the terms of P4 in particular with regard to the requests [in the form of an advance notice] of the Petitioner, under and in terms of P4 viz. Clause 5 read with Clause 9, to provide Viceroy Special [coaches with steam engine i.e. Loco213 B2B, Loco 215 B1A and Loco 340 B1D] in good running order and running condition;

(e) Grant an Order in the nature of a writ of Mandamus directing the 1st Respondent, and/or one or more of the 2nd – 4th Respondent’s acting under the 1st Respondent to honor the terms of P4 in particular with regard to the requests [in the form of an advance notice] of the Petitioner, under and in terms of P4 viz. Clause 5 read with

Clause 9, to provide Viceroy Special [coaches with diesel engines] in good order and running condition;”

The facts of the Petitioner’s case are as briefly as follows. The Petitioner company is a tour operator and launched the Viceroy Special luxury steam train service (herein referred to the Viceroy Special) which is the subject matter of this Application. The Petitioner submits that the Viceroy Special was in uninterrupted operation for a period of 38 years from 1986 until 2024. For the use of the train the Petitioner and the 1st Respondent had entered into a contract. The Petitioner and the 1st Respondent from time to time renewed the contract and it was a part of the conditions that,

“a. The Petitioner shall meet the full cost of reconditioning, renovating and air conditioning of Viceroy Special and the routine maintained of the interior of the carriages.

...

e. 1st Respondent shall provide Viceroy Special in good order and running condition when so requested by the Petitioner by the Petitioner, subject to sufficient notice given prior to each journey, as per the terms of the Agreement in force [i.e. 10 days] Viz. Clause 5 read with Clause 9 of P4;

f. payment relevant for each journey shall be per the invoice forwarded by the 1st Respondent, calculated in terms of the provisions of the relevant Agreement in force, all of which had been to date settled by the Petitioner, as and when intimated;”

The parties entered into an Agreement to renew the Viceroy Special contract on 08.11.2023, which is valid from 08.11.2023 through 07.11.2028. The Petitioner states that during the operation of the Viceroy Special in 2024, payments to the 1st Respondent were settled in a timely manner. The Petitioner notified the 1st Respondent of the necessity to operate 3 round trips of the Viceroy Special but the 1st Respondent in breach of the contract has failed to supply the steam train. Hence, this Application.

The Petitioner's case

The Petitioner contends that the failure to supply the train by the 1st Respondent caused irreparable damage and the 1st Respondent has failed to comply with his obligations.

Respondents' objection

The Senior State Counsel for the Respondents objected to the issuance of notice on the basis that the relationship between the parties is contractual and hence without a statutory flavour.

What governs the relationship between the parties?

The Petitioner is not at variance that the relationship between the parties is bound by the commitments that the said parties made under the document marked as P4. The said P4 is a contract between the parties. The said contract is valid from 08.11.2023 to 07.11.2028. It is the contention of the Petitioner that prior to entering into this contract, the parties have entered into previous contracts that date back to 1986. It is further contended that as per the agreement the Petitioner is to be supplied with an engine to run the Viceroy Special train on the payment of the stipulated amounts in the contract. It is also submitted that the Petitioner on various occasions has spent on maintaining the train and getting foreign experts to attend to the train engines. The Petitioner is alleged to have paid all the funds. However, it appears that the Respondents have instituted action against the Petitioner for non-payment of an expenditure as per the terms of the agreement between the parties. Further, the Respondents state that as per the P4 agreement, the Respondents are not liable to provide steam engines to run the train, but the clause stipulates that the engine provided to run the train would be **steam or diesel**. They further stated that the inability to provide a steam engine is due to the two steam engines that were provided to the Petitioner being broken and needing repairs. However, the learned Counsel for the Respondents were in agreement to provide a diesel engine. The Petitioner contended that their agreement is not to get a diesel engine and the entire business promotion that the Petitioner has published is to carry passengers in a steam locomotive. Hence, they insist on a steam locomotive.

Be that as it may, this Court will now consider the objections of the Respondents. The Respondents contend that what the Petitioner seeks is based on the agreement between the parties reflected in the document marked as P4. This Court observes that the Petitioner too is relying on the document marked as P4 and all the documents are based on the

implementation of P4. The Petitioner does not contend that the Respondents' failure to provide a train arises out of a decision bad in law. His contention is that he has a legal right based on the document marked as P4 to be supplied with a steam engine which the 1st Respondent has failed to do.

This Court has carefully considered the submission made by the Petitioner and by the Respondents. This Court has also considered the documents marked as P1 to P21. It is clear that the relationship between the Petitioner and the Respondent is based presently under P4, the contract between the parties. Thus, the Court can safely come to the conclusion that the relationship between the parties is contractual.

It is contended by the Petitioner that to enter into P4, the said agreement had been vetted by the Hon. Attorney General and the agreement was entered into based on a Cabinet decision. However, the Petitioner has failed to plead the said Cabinet decision. In reply the learned Senior State Counsel submits that, there is no Cabinet decision tendered with the Petition.

Reliefs prayed

The Court observes that the Petitioner in his prayer has prayed to obtain mainly 2 relief among other things. As enumerated in prayer (d) and (e). Prayer (d) reads as follows:

*“(d) Grant an order in the nature of a writ of Mandamus directing the 1st Respondent, and/or one or more of the 2nd – 4th Respondent’s acting under the 1st Respondent to honor the terms of P4 in particular with regard to the requests [in the form of an advance notice] of the Petitioner, under and **in terms of P4** viz. Clause 5 read with Clause 9, to provide Viceroy Special [coaches with steam engine i.e. Loco213 B2B, Loco 215 B1A and Loco 340 B1D] in good running order and running condition;”*

Prayer (e) reads as follows:

*“(e) Grant an Order in the nature of a writ of Mandamus directing the 1st Respondent, and/or one or more of the 2nd – 4th Respondent’s acting under the 1st Respondent to honor the terms of P4 in particular with regard to the requests [in the form of an advance notice] of the Petitioner, under and **in terms of P4** viz.*

Clause 5 read with Clause 9, to provide Viceroy Special [coaches with diesel engines] in good order and running condition;”

It is observed that P4 is the agreement between the parties. In summary, the Petitioner is seeking for the Respondent to provide him with the steam train pursuant to P4. It is evident that the Petitioner is attempting to invoke the Writ jurisdiction in seeking a Writ of Mandamus for the specific performance of a contract the 1st Respondent had entered into with the Petitioner. The Petitioner has failed to demonstrate any statutory flavour which enables him to invoke the Writ jurisdiction of this Court. If there is a breach of contract the Petitioner Company must advise themselves as to the course of action, the Petitioner should follow.

It is trite law that if the relationship between the parties is contractual, no writ lies. According to "**Administrative Law**" (10th Edition) by Professors Wade and Forsyth, "*contractual obligations are not enforceable by judicial review*" (p.678). It is further stressed that "contracts of employment are equally beyond the scope of quashing and prohibiting orders" (p.538). This was pontificated in *Vidyodaya University Council v. Silva* (1965) 1 WLR 77 and in *R v. Post Office ex p. Byrne* (1975) ICR 221, *R v. Crown Prosecution Service ex p. Hogg* (1994) 6 Admin. LR 778. 11.

The case of *M.S.S Salahudeen v. Sri Lankan Airlines Ltd.* cited the case of *Galle Flour Milling (Pvt) Limited v. Board of Investment of Sri Lanka and another* (2002) BLR 10, which held that,

"An analysis of the relationship that existed between the parties reveals that as it was purely a contractual one of commercial nature, neither certiorari nor mandamus will lie to remedy the dispute over the rights of the parties. The purported breach of such rights (and) the grievance(s) between the parties, arise entirely from a breach of contract, even if one of the parties was a statutory or public authority."

Further this Court in *K.W.D. Chandrani v. National Housing Development Authority* CA/WRIT/0036/24 decided on 31.07.2024 considered the decisions of the Supreme Court in *M.P.A.U.S. Fernando and others v Timberlake International Pvt. Ltd. and another* S.C. Appeal No. 06/2008 decided on 02.03.2010, *Ratnayake and others v C.D. Perera and others* (1982) 2 SLR 451 and the Court of Appeal in decision *Jayaweera v Wijeratne*

(1985) 2 SLR 413 to hold that where the relationship between the parties is purely contractual, judicial review will not lie.

It is also observed by this Court that even if there was a Cabinet memorandum and a corresponding Cabinet decision, the said decision is for the parties to entered into a commercial contract. When considering the facts of this case, this Court finds that there is no statutory obligation for the 1st Respondent to provide the said train. The said obligation arises only through a commercial contract entered between the two parties. Hence, it is the considered view of this Court that the Learned Senior State Counsel's objections have to succeed.

In coming to the said conclusion, this Court also observes that the Respondent's had violated a Cabinet decision. It is also observed that the Petitioner's case is not to enforce a Cabinet decision but the Petitioner's case is to enforce P4, which is a contract between the Petitioner and the 1st Respondent. Hence, it is clear the Petitioner is attempting to obtain a Writ of *Mandamus* to implement a contract.

Accordingly, considering all material placed before this Court and the submissions made, for the reasons stated above this Court is not inclined to issue formal notices on the Respondents and proceeds to dismiss this Application.

This Court also wishes to make an observation, that is, if the parties wish to proceed with their commitments under P4 or reach a settlement this Order should not be an obstacle for the same.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal