

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*,
Mandamus and Prohibition in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No:
CA/WRIT/678/2023

1. Mannamarakkalage Ranjeewa
Srimaal Cooray,
No. 7, Vidyala Road, Wadduwa.
2. Amarathungage Neel Premanaath
Perera,
No. 18/1, Busikamulla, Paragasthota.
3. Kolonna Appuhamilage Nevil
Disantha,
No. 182/42, “Sithum Sewana”
Maharukma, Maawala, Wadduwa.
4. Benthota Aarachchige Dilantha,
No. 140/A, Nugagoda, Waskaduwa.
5. Sadda Widda Palanga Pathira
Muthukumara,
Unnhaelage Chandradaasa Alwis,
Nugegoda, Waskaduwa.
6. Ginthota Widanalage Dharshana
Priyantha Kumara Silva,
Paalama Asala Deldoowa,
Wadduwa.
7. Ginthota Widanalage Udith Niroshan
Silva,
No. 25, Apiriyagama, Dheldoowa,
Wadduwa.

8. Ginthota Widanalage Asanka Sanjeeva Silva,
No. 180, Delgoda, Delduwa, Wadduwa.
9. Sindu PadmaKumari Kahawita,
No. 200/A, Kuda Goonaduwa, Moranthuduwa.
10. Kidel Pitiyage Nihal Perera,
No. 132, Galthude, Bandaragama.
11. Pulleperumage Don Githaanga Wijesekara,
Galthude, Bandaragama.
12. Don Nilantha Rangana Pulleperuma,
75B, Galthude, Bandaragama.
13. Mathara Samarakoonge Wimalaratne Ratnayake,
Medagama, Bandaragama.
14. Lokubada Weerasuriya Patabaedhige Jayalath,
No. 187/A, Sachool Road, Moranthuduwa.
15. Kanahaela Muhandiram ge Sugath Siriwardhana,
Walawatta, Moranthuduwa.
16. Kidel Pitiyage Nihal Perera,
No. 132, Galthude, Bandaragama.

PETITIONERS

Vs.

1. Road Passenger Transport Authority,
Western Province, Ranmagapaya,
No. 89, Ranmagapaya,
Kaduvela Road, Battaramulla.

2. O.W. Prasanna Sanjeewa,
Chairman/President,
(Road Service Permit Tender
Committee)
Western Province Road Passenger
Transport Authority,
No. 89, 'Ranmagapaya',
Kaduwela Road, Battaramulla.
3. A.M.S. Malkanthi,
Director of Road Passenger
Transport Authority,
No. 89, Ranmagapaya,
Kaduwela Road, Battaramulla.
4. R.M.D. Kumari,
Director of Road Passenger
Transport Authority,
No. 89, Ranmagapaya,
Kaduwela Road, Battaramulla.
5. N.K. Miranda,
Director of Road Passenger
Transport Authority,
No. 89, Ranmagapaya,
Kaduwela Road, Battaramulla.
6. Indika Hapugoda,
Director of Road Passenger
Transport Authority,
No. 89, Ranmagapaya,
Kaduwela Road, Battaramulla.
7. M. Wicramarachchi,
Director of Road Passenger
Transport Authority,
No. 89, Ranmagapaya,
Kaduwela Road, Battaramulla.
8. H.M. Lakidu Gajasen Herath,
Director of Road Passenger
Transport Authority,
No. 89, Ranmagapaya,
Kaduwela Road, Battaramulla.

9. H.G. Koralearachchi,
Director of Road Passenger
Transport Authority,
No. 89, Ranmagapaya,
Kaduwela Road, Battaramulla.
10. M.L. Liyanarathna,
Director of Road Passenger
Transport Authority,
No. 89, Ranmagapaya,
Kaduwela Road, Battaramulla.
11. Chandima Dissanayake,
Director of Road Passenger
Transport Authority,
No. 89, Ranmagapaya,
Kaduwela Road, Battaramulla.
12. National Transport Commission,
No. 241, Park Road, Colombo 5.
13. The Chairman,
National Transport Commission,
No. 241, Park Road, Colombo 5.
14. Regional Manager,
Road Passenger Transport Authority
(Western Province),
Regional Office, Kalutara.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Sandamal Rajapaksha for the Petitioners.
Kapila Liyanagamage for the 1st to 4th, 6th to 11th and 14th Respondents.

Supported on: 20.05.2025

Decided on: 27.06.2025

Mayadunne Corea J

The Petitioners in this Application, *inter alia*, sought the following reliefs:

- “(b) *Grant and issue a mandate in the nature of a Writ of Certiorari, quashing the decision taken by the 1st and 2nd Respondents to grant new permits for addition of new buses for the Route No. 425 (Kalutara – Bandaragama)*
- (c) *Grant and issue a mandate in the nature of Writ of Prohibition, restraining all or any one or more of the Respondents and/or their successors in office, from calling new tenders for new permits for addition of new buses for the Route No. 425 (Kalutara – Bandaragama)*
- (d) *Grant and issue a mandate in the nature of Writ of Mandamus compelling the 1st to 13th Respondents to hold a survey regarding the number of passengers who use the bus on Route No. 425 (Kalutara – Bandaragama)”*

The facts of the case briefly are as follows. The Petitioners have obtained permits to operate passenger services from Kalutara to Bandaragama on Route No. 425. On or about 06.10.2023 the President of the Road Service Tender Commission of the Road Passenger Transport Authority of the Western Province had published a notice calling for tenders to issue regular passenger service permits. According to the notice, tenders were to be called to issue new permits. It is the contention of the Petitioners that the decision to award a tender for a new bus is *inter alia* illegal, *ultra vires* both procedural and substantively, unlawful, arbitrary, capricious and also offends the principles of legitimate expectation, natural justice, reasonableness, and fairness.

The Petitioners' contention

The Petitioners state that the addition of a new bus would interrupt the present regular passenger service schedule which will result in the reduction of one bus tour per bus and the profits would be reduced by half.

The Petitioners contend that the 1st Respondent Authority had acted contrary to section 6(1) of the Western Province Provincial Passenger Transport Services Authority Statute No. 01 of 1992 (hereinafter referred to as the "Provincial Statute") for failing to conduct a survey to ascertain whether the buses are sufficient for the passengers using the route prior to the issuance of permits. Further, the Petitioners contend that the 3rd Respondent had not acted in accordance with any policy or guidance issued by the 1st Respondent as required by section 6(2) of the Provincial Statute.

The Respondents' contention

The Respondents state that factors such as load, performance and running during off-peak hours had been considered when tenders were called for Route No.425. The Respondents state that the permitted buses should operate 44 turns per day from each end of the route and that 11 buses are required in order to provide an efficient service whereby each bus receives an equal number of turns. The Respondents further contended that however, only 10 buses operate from the Kalutara end and thereby, creating a practical difficulty, especially during the final night turn to have and maintain an uninterrupted passenger service. Hence, it is contended that 11 buses should operate from the Kalutara end of the route.

Analysis

This Court will now consider the submissions made by the learned Counsel for the Petitioners. The Petitioners have obtained route permits to operate a regular passenger service on Route No. 425 from Kalutara to Bandaragama and from Bandaragama to Kalutara (P1A - P1O). The parties are not at variance that the 1st Respondent is the Authority that is empowered to issue route permits. The Petitioners allege that the 2nd Respondent had called for tenders to grant route permits for a bus to ply on Route No. 425 Kalutara – Bandaragama (P2). As per P2A, it is evident that there are 11 buses operating from the Bandaragama end while 10 buses operate daily from the Kalutara end. This creates an inequality of the number of buses plying from both ends. This

inequality is aggravated when it comes to the last two turns of the day, thereby causing not only an inequality but the resulting position of causing hardship to the passengers, especially in the night. It is also evident that the number of turns each bus will ply for the day will not be affected by issuing an additional permit. Hence, the unsubstantiated argument that the Petitioners' income will reduce by half cannot be accepted.

Survey before issuing a route permit

It is the contention of the Petitioners that the Respondents are statutorily bound to carry out a survey prior to issuing more route permits. Hence, the failure to comply with the said requirement makes the decision to tender an additional route permit bad in law. In essence, the thrust of the Petitioners' argument is that the Respondents are required to carry out the survey pursuant to section 6(1) and 6(2) of the Provincial Statute before calling for tenders to issue route permits. They argue that non-compliance with the said Statute before taking the decision calling for tenders is bad in law and is liable to be quashed by a Writ. This would be an appropriate time to consider the provisions relied on by the Petitioners. The said provincial statute states as follows:

“6

(1) ...

(අ) බස්නාහිර පළාත ඇතුළත මහජන මගී ප්‍රවාහන අවශ්‍යතා සපුරාලීම සඳහා ප්‍රමාණවත්, පිළිගත් මනා තත්ත්වයක බස් සේවයක් පවතින්නේද යන වග පිළිබඳව සමීක්ෂණයක් කිරීම සහ ධාවන සටහන් පිළියෙල කිරීම හා ධාවකයන් එම කාල සටහන් පිළිපදින බවට වගබලා ගැනීමට පියවර ගැනීම.

(ආ) මගී ප්‍රවාහනය සඳහා බස් රථ පාවිච්චි කිරීමට බලය දෙන මගී සේවා අවසර පත් නිකුත් කිරීම හෝ ඒ අවසර පත් අලුත් කිරීම.

...

(2) අධිකාරිය විසින් බලතල, කායර්න් හා කතර්වායන් ක්‍රියාත්මක කිරීම හා ඉටු කිරීම 1991 අංක 37 දරණ ජාතික ගමනාගමන සෞඛ්‍ය සහ පනත යටතේ පිහිටුවා ඇති ජාතික ගමනාගමන කොමිෂම් විසින් වරින් වර දිය හැකි ප්‍රතිපත්තිමය මහ පෙත්වීම හා උපදෙස් වලට අනුකූල විය යුතුය”

The thrust of the Petitioner's argument is that prior to taking the decision to award an additional route permit, the 1st - 11th Respondents should have conducted a survey. It was their contention that the requirement for a survey is a condition precedent to the issuance of a permit. I have carefully considered the section relied on by the Petitioners which is reproduced above. As per the said section, the power to issue permits lies with the 1st Respondent (6(1)(අ)). It is also observed that under section 6(1)(ආ), the 1st

Respondent is entrusted to carry out a survey to ascertain whether there is a quality and accepted passenger transport service and to prepare timetables for the transport service.

However, there is no legally envisaged requirement in this section which compels the 1st Respondent to carry out a survey before issuing new route permits. As per the submissions of the Counsel appearing for the Petitioners, it is argued that the survey should be conducted prior to calling for tenders to issue new permits. The Respondents in response, submitted that a survey had been conducted and based on the findings as pleaded in paragraph 4 of the limited objections, a decision had been made to call for new tenders. Further, it is the Respondents' contention that they have also considered providing time for the buses to have regular maintenance. It is also their contention that it is not necessary to conduct a survey every time before a new tender is called to issue new permits.

I have considered the judgment *Environmental Foundation Ltd v. Hon. Anura Priyadarshana Yapa & 9 others* SC (F/R) No. 87/2007 dated 27.02.2013. What is tendered to Court is part of the settlement the parties in the said case had entered into. However, it does not bind the Respondent to hold a survey in the instant case before a decision is taken to call for tenders to issue route permits.

As per the submissions of both Counsel as well as material submitted to this Court, there is no material disclosed at this stage for the Court to come to a conclusion as to whether a survey had been carried out or not. However, it was not the contention of the Petitioner that the Respondents have never carried out a survey. In any event, whether a survey was carried out or not becomes a disputed fact. When facts are in dispute a Writ Court is reluctant to use its discretionary powers of Writ jurisdiction. In the case of *Thajudeen v. Sri Lanka Tea Board & another* (1981) SLR 471, it was held

“where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a writ will not issue.”

This Court is not inclined to accept the argument of the Petitioners that each time when calling for tenders the 1st Respondent is bound to carry out a survey pursuant to the provisions of the Statute. In any event as stated above, the said submission is not tenable in view of what is stated in the Statute. Though it would be useful to conduct a survey to ascertain the demand and supply before granting new permits, as this would minimize

the unhealthy practices of competing to get as much as possible number of passengers at the cost of the safety of the passengers and the other road users.

This Court will now consider the provisions of the National Transport Commission Act No. 37 of 1991. In the said Act, section 24 stipulates as follows:

“24. Upon receipt of an application for a passenger service permit, the Commission may having regard to the demand for omnibus services by the public, on the route or routes applied for in the application, either grant or if it is satisfied that the grant of such, permit would result in the over allocation of omnibus capacity on the route applied for refuse to grant a passenger service permit.”

This Court has also considered the objections filed by the Respondents and especially paragraph 4 of the objections whereby the 1st, 2nd, 3rd, 4th, 6th, 7th, 8th, 9th, 10th, 11th and 14th Respondents have stated that prior to the impugned sub tender for Route No. 425 was tendered, they have considered the load factor, performance of the existing permitted buses and the need to run the buses during the off-peak hours. Accordingly, in my view, the said Respondents have sufficiently complied with the requirements of the National Transport Commission Act before calling for fresh tenders to award the route permits. Hence the Petitioners’ main argument to impugn the calling of tenders becomes untenable.

The Respondents also submitted that in coming to the decision to call for new tenders they have considered the need to have a healthy transport service with buses in a mechanically perfect condition. As per the documents marked 1R1 and P2A, it is evident that though there are 11 buses plying from Bandaragama to Kalutara, there are only 10 buses from Kalutara to Bandaragama. Thus, there is an imbalance. Further, it is argued that since the buses are carrying passengers, the said buses should be regularly maintained and there should be regular mechanical inspections. It was also submitted that the drivers for the buses should be given adequate rest. It was also contended by the Respondents that they expect the Petitioners to do regular maintenance on the buses and provide a rest day for the crew. Therefore, considering the above submissions it is observed that by the issuance of an additional permit the buses will have more free time to be sent for regular inspection and maintenance thereby creating a fleet of buses that are in an acceptable and good condition.

In my view, the buses are providing a public service and the utmost importance should be given in this instance is to provide uninterrupted transport service and one of the

prime concerns should be the safety of the passengers. Hence, I am inclined to agree with the submissions of the learned Counsel for the Respondents on the need for an additional bus from the Kalutara end.

In the view of the Court, the submissions of the learned Counsel for the Respondents, that they have considered the load factors, the performance of the existing permanent buses before taking a decision to call for tenders to issue a new permit, negates the Petitioner's argument that they would suffer a financial loss by the addition of new buses. Considering the above argument the Petitioners' main concern seems to be their unproven projections of losing revenue. In my view, the entire submission of the Petitioners was based on the concerns of the said bus operators' possible loss of earnings. This is evident by the pleadings of the Petitioners especially in paragraphs 29 and 32 of the Petition. In my view, to have an efficient and safe passenger transportation service, this should not be the criteria.

Even though the Petitioners have submitted the decision to call for new tenders to be illegal, *ultra vires*, unlawful, arbitrary, capricious, in violation of the principles of natural justice, reasonableness and fairness. None of these were established at the submission stage nor by any documentary evidence. The only ground that the Petitioners have relied on was that the Respondents have not carried out a survey under section 6(1) of the Provincial Statute. As stated above, this Court has clearly opined that there is no condition precedent to call for a survey prior to a fresh tender being called to issue new route permits.

At the submission stage, there was no dispute among the parties that the power to issue route permits are vested with the 1st Respondent Authority. However, in exercising their duties the 1st Respondent should follow and be consistent with the policies and guidelines of the National Transport Commission (herein referred to as 'NTC') in this instance, the learned Counsel for the Petitioners has failed to establish whether in coming to the decision of issuing P2, the 1st Respondent had violated the guidelines, advice and the policy decisions of the NTC. The Petitioners have failed to tender any advice or a policy decision that has been violated. In the absence of such, this Court is compelled to accept that the 1st Respondent had complied with the policies and guidelines of the NTC.

The burden of proof in a Writ Application lies with the Petitioner. Hence, this Court has considered the case of *Saranguhewage Garvin De Silva v. Lankapura Pradeshiya Sabha and others* SC Appeal 10/2009 decided on 15.12.2014, where it was held that,

“The burden of proof in any application for prerogative writ including mandamus is on the person who seeks such relief, to prove the facts on which he relies”.

In the case of ***Dr. Puvanendran and another v Premasiri and two others*** (2009) 2 SLR 107 it was held that,

“The Court will issue a writ only if (1) the major facts are not in dispute and the legal result of the facts are not subject to controversy and (2) the function that is to be compelled is a public duty with the power to perform such duty.”

Hence, if there was a violation of section 6(2) of the Provincial Statute, it was incumbent on the Petitioners to give the exact particulars of the violation with material to substantiate the allegation. However, in this instance, the Petitioners have failed to do so.

This Court is also of the view that the Petitioners have failed to demonstrate that there is a *prima facie* case to be looked into by this Court. Accordingly, this Court is not inclined to issue formal notice on the Respondents and proceed to dismiss this Application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal