

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

Associated Motorways (Pvt) Ltd.,  
No.185, Union Place,  
Colombo 02.  
Petitioner

**CASE NO: CA/WRIT/430/2015**

Vs.

1. Consumer Affairs Authority of  
Sri Lanka,  
Level 1 and 2,  
CWE Secretariat Building,  
No.27, Vauxhall Street,  
Colombo 02.
  2. Savinda Enterprises (Pvt.) Ltd.,  
No.176F, Saranatissa Mawatha,  
Kahathuduwa,  
Polgasovita.
- Respondents

Before: Mahinda Samayawardhena, J.  
Arjuna Obeyesekere, J.

Counsel: Dr. Harsha Cabral, P.C., with Thishya  
Weragoda for the Petitioner.  
Suranga Wimalasena, S.S.C., for the 1<sup>st</sup>  
Respondent.  
Channa Ranasinghe for the 2<sup>nd</sup> Respondent.

Argued on: 23.09.2020

Decided on: 16.11.2020

Mahinda Samayawardhena, J.

The Petitioner trader filed this application seeking to quash by a writ of certiorari the decision of the 1<sup>st</sup> Respondent, the Consumer Affairs Authority, dated 27.11.2014 marked A18B, made in terms of section 13(4) of the Consumer Affairs Authority Act, No.9 of 2003. The decision was pursuant to an inquiry held in terms of section 13(1) into a complaint lodged by the 2<sup>nd</sup> Respondent consumer in respect of a motor vehicle purchased from the Petitioner.

Learned Counsel for the 2<sup>nd</sup> Respondent takes up a preliminary objection to the maintainability of this application on the ground that the supporting affidavit of the Petitioner filed with the petition is defective, in that (a) the affidavit is typed on the letterhead of the Attorney on record for the Petitioner, (b) the alteration in paragraph 30 of the affidavit is not initialed by the Justice of the Peace who attested it, (c) the Justice of the Peace

has signed the affidavit as a Commissioner for Oaths, and (d) the residential address of the affirmant is not given in the affidavit.

Although the affidavit is typed on the letterhead of the Attorney on record, it has been affirmed to before a Justice of the Peace who has placed his seal beneath his signature. The alleged alteration in the affidavit, which is not at once visible, is not at all on a material or contested point. The affirmant has deposed to the facts as the General Manager (After Sales) of the Petitioner company, hence the official address.

None of the said “defects” render the affidavit invalid, as they are, if at all, relevant to the form and not the substance of the affidavit. Such technical defects as to form can be cured by application of section 9 of the Oaths and Affirmations Ordinance (*Pushpadeva v. Senok Trade Combine Ltd [2015] BLR 40*, *Facy v. Sanoon [2006] BLR 58*).

I overrule the said preliminary objection.

Before I consider the Petitioner’s case on its merits, there is a preliminary issue to be addressed, though technical in nature, which goes to the root of the matter. That is, the validity of the impugned decision due to lack of quorum.

Item 8(2) of the Schedule to the Consumer Affairs Authority Act (read with section 3(4) of the Act) says “*The quorum for any meeting of the Authority shall be four members.*” Learned President’s Counsel for the Petitioner submits that when the impugned decision A18B was purportedly made on 27.11.2014,

there was no quorum of the Authority in the eyes of the law to make such a decision.

The Petitioner, tendering the inquiry proceedings dated 27.11.2014 marked A17B and drawing the attention of the Court to page two thereof, says the inquiry was held before only one member of the Authority, namely, Major General N. Jayasuriya, whereas the Act requires that it be held before four members.

In reply, the 1<sup>st</sup> Respondent Authority, tendering 1R7, says in paragraph 18 of its statement of objections:

- (a) At the inquiry held on 27.11.2014, two members of the inquiry panel have left before placing their signatures to the inquiry proceedings pertaining to that date.*
- (b) A copy of the proceedings of the inquiry dated 27.11.2014 containing the signature of only one member of the inquiry panel has been served on the Petitioner*
- (c) The members of the inquiry panel who failed to place their signatures as mentioned above have subsequently placed their signatures to the inquiry proceedings pertaining to that date.*

I am unable to accept this flimsy explanation.

On the other hand, even if I were to accept this explanation, according to page two of 1R7 dated 27.11.2014, only three members of the Authority participated at the inquiry, whereas the quorum is four members, not three.

However, the impugned decision A18B of the same date, i.e. 27.11.2014, has been signed by four members: the three mentioned in 1R7 and another member, namely, Milton Amarasinghe.

The signatures of four members have been added to the decision to give it artificial validity in terms of quorum. The quorum requirement, which goes to the very foundation of the decision, is not curable by merely placing four signatures to the decision if all four signatories did not participate in the decision-making process, i.e. the main inquiry.

Learned Counsel for the 2<sup>nd</sup> Respondent, in his ingenuity, takes up the following position:

*The quorum as stated in the Schedule to the Act is applicable only for the meetings of the Consumer Affairs Authority itself and therefore is not per se applicable to any inquiries held in terms of the other operative sections of the Act.*

I place on record my appreciation for the innovative thinking of learned Counsel for the 2<sup>nd</sup> Respondent. He makes a distinction between meetings and inquiries of the Authority, and contends that the quorum is necessary only for the former and not the latter.

In elucidating his argument, learned Counsel refers to section 3(4) which says “*The provisions of the Schedule to this Act, shall have effect in relation to the term of office of the members of the Authority, the meetings and seal of the Authority*”, and item 8(2)

of the Schedule to the Act which says “*The quorum for any meeting of the Authority shall be four members*”.

Let me now have a closer look at this novel argument.

Section 8 of the Act lists the functions of the Authority. Item (f) thereof says “*The functions of the Authority shall be to – carry out investigations and inquiries, in relation to any matter specified in this Act*”.

There is no dispute that the inquiry was held and the decision made under section 13(1) and 13(4) of the Act respectively.

Section 13(1) reads as follows:

*The Authority may inquire into complaints regarding*

*(a) the production, manufacture, supply, storage, transportation or sale of any goods and to the supply of any services which does not conform to the standards and specifications determined under section 12; and*

*(b) the manufacture or sale of any goods which does not conform to the warranty or guarantee given by implication or otherwise, by the manufacturer or trader.*

Section 13(4) reads as follows:

*Where after an inquiry into a complaint, the Authority is of opinion that a manufacture or sale of any goods or the provision of any services has been made which does not conform to the standards or specifications determined or*

*deemed to be determined by the Authority, or that a manufacture or sale has been made of any goods not conforming to any warranty or guarantee given by implication or otherwise by the manufacturer or trader, it shall order the manufacturer or trader to pay compensation to the aggrieved party or to replace such goods or to refund the amount paid for such goods or the provision of such service, as the case may be.*

Hence, there is no doubt that holding an inquiry and making a decision thereon is a function of the Authority.

Who is the Authority?

Section 2(1) enacts:

*An authority called the Consumer Affairs Authority (hereinafter referred to as the “Authority”) is hereby established which shall consist of the persons who are for the time being members of the Authority under section 3.*

Section 3(1) and (2) provide:

*3(1) The Authority shall consist of a Chairman and not less than ten other members who shall be appointed by the Minister from among persons who possess recognized qualifications, have had wide experience and have distinguished themselves in the field of industry, law, economics, commerce, administration, accountancy, science or health.*

*(2) The Chairman and three of the members, selected by the Minister from among the members appointed under subsection (1), shall be full time members (hereinafter referred to as “full time members of the Authority”).*

If the argument of learned Counsel for the 2<sup>nd</sup> Respondent is to be accepted, the inquiry shall be held and the decision taken by all members of the Authority, for the quorum would be applicable only to meetings and not to inquiries. Then the impugned inquiry and the decision thereon become *ultra vires*.

The word “meeting” is not defined in the Act.

Any argument that an inquiry can be held and a decision taken by even one member of the Authority sitting alone is plainly unacceptable.

The initial argument that the requirement of the quorum is necessary only in respect of meetings but not inquiries is proved unsustainable by the next argument of learned Counsel for the 2<sup>nd</sup> Respondent himself.

Learned Counsel, in the latter part of his submission, makes another distinction between an inquiry which involves policy decisions affecting the entire public and/or an industry as a whole, and an inquiry between two parties on a particular issue, such as the sale of a finished product. He submits that the quorum is required in the case of the former but not in the case of the latter. In explaining further, he says the quorum is required in section 18 inquiries but not in section 13 inquiries. But the Act does not support this argument.



This argument goes to show that it is not the position of learned Counsel that “meeting” excludes inquiries.

Section 18, like section 13 (which I have already quoted), only speaks of inquiries and decisions of the Authority. Section 18 does not speak of meetings of the Authority or the quorum for such meetings. There is no significant difference between a section 13 inquiry and section 18 inquiry, although the magnitude of the subject matter may differ. Nonetheless, the applicability of the governing principles of law and procedure remain the same.

Let me quote section 18 for better understanding:

*18(1) Where the Minister is of opinion that any goods or any service is essential to the life of the community or part thereof, the Minister in consultation with the Authority may by Order published in the Gazette prescribe such goods or such service as specified goods or specified service as the case may be.*

*(2) No manufacturer or trader shall increase the retail or wholesale price of any goods or any service specified under subsection (1), except with the prior written approval of the Authority.*

*(3) A manufacturer or trader who seeks to obtain the approval of the Authority under subsection (2), shall make an application in that behalf to the Authority, and the Authority shall, after holding such inquiry as it may consider appropriate:*

*(a) approve such increase where it is satisfied that the increase is reasonable; or*

*(b) approve any other increase as the Authority may consider reasonable,*

*and inform the manufacturer or trader of its decision thirty days of the receipt of such application.*

*(4) Where the Authority fails to give a decision within thirty days of the receipt of an application as required under subsection (3), the manufacturer or trader who made the application shall be entitled to, notwithstanding the provisions of subsection (1), increase the price:*

*Provided however, where the delay in giving its decision within the stipulated period was due to the failure of the manufacturer or trader to give any assistance required by the Authority in carrying out its inquiry into the application, the Authority shall have the power to make an interim order preventing the said manufacturer or trader from increasing the price, until the Authority makes its decision on the application.*

I am unable to accept the argument that the quorum is necessary only if the inquiry deals with a matter affecting a large section of society but not when the inquiry deals with the rights of two individual parties. There are no private inquiries before the Consumer Affairs Authority. All inquiries relate to public matters to which the same laws and procedures apply.

It is not correct to say section 18 relates to a “core function” of the Consumer Affairs Authority whereas section 13 does not. As I stated earlier, section 8 of the Act recognises that one of the “functions” of the Authority is to *“carry out investigations and inquiries, in relation to any matter specified in this Act”*.

Learned Counsel refers to sections 6, 66, 67 and items (n) and (o) of section 8 to emphasise that the functions of the Authority (including conducting inquiries) can be delegated even to a single public officer, be it the officers and staff of the Authority or servants and advisers of the Authority. He highlights this to argue that there is no uniformity in the applicability of the quorum, in that an inquiry can be held by even a single officer. He nevertheless later admits *“[inquiries] under section 18 of the Act which is a specific function of the Consumer Affairs Authority cannot be delegated under the general delegation provisions elsewhere in the Act”*.

As much as section 18 is identifiable as a specific function of the Authority, so too is section 13. An inquiry under section 13 and a decision thereon cannot be delegated under the general delegation of powers to public officers. In such inquiries, the Authority exercises judicial or quasi-judicial powers, which cannot be delegated. The Authority can delegate powers in respect of investigations to obtain expert opinion etc. but not in respect of the main inquiry *per se*.

In *Shell Gas Lanka Ltd. v. Consumer Affairs Authority* [2007] 2 Sri LR 212, which is a case involving a complaint in terms of section 18 of the Consumer Affairs Authority Act, it was held at 214-215

that the power conferred on the Authority by statute must be lawfully exercised by the Authority itself:

*It is essential that for the lawful exercise of power, it should be exercised by the 1st Respondent [Consumer Affairs] Authority upon whom such power is conferred and by no one else. The extent of permissible delegation will, of course, have to be determined with reference to the terms of the statute, because if the delegation exceeds the limits set out by the statute it will be ultra vires leading to the invalidity of the act done by the delegate. I am unable to agree with the learned Senior State Counsel that the powers of the Authority can be delegated to the Pricing Committee. The Pricing Committee may facilitate the discharge of the functions of the Authority. But, the Pricing Committee has no jurisdiction to exercise the powers of the Authority. The Act section 6 provides the delegation of powers to Public Officers only. A statutory power to delegate functions will not necessarily extend to everything. Thus, it has been held in the case of General Medical Council v U.K. Dental Board) that the General Medical Council must itself exercise its disciplinary powers over Dentists and cannot delegate them on to an Executive Committee for the purpose of its functions under Dentists Act.*

This principle is also discussed in Wade's *Administrative Law* (11<sup>th</sup> Edition) at p.259:

*An element which is essential for the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by no one else. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable. Normally the courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute, and in condemning as ultra vires action taken by agents, sub-committees or delegates, however expressly authorised by the authority endowed with the power.*

Hence, learned Counsel's submission that the Authority can delegate to public officers its power to conduct inquiries under section 13 is unsustainable.

The quorum is not necessary for all functions of the Consumer Affairs Authority, including investigative functions, but it is necessary for meetings, which include formal inquiries culminating in final decisions.

Learned Counsel for the 2<sup>nd</sup> Respondent strenuously submits that the participation of four members at all inquiries (per the quorum requirement) is not practical and, if insisted upon, would cripple the smooth functioning of the Authority. I cannot agree. The Act provides that the Authority shall consist of a Chairman and not less than ten members. According to the Annual Report of 2014 of the Authority found on its official website, the Authority had 33 members at the end of 2014 (the

impugned decision was made on 27.11.2014). This number did not include officers, staff, aids, advisers etc.

For the aforesaid reasons I hold that the impugned decision A18B is a nullity, as it has not been made by a properly constituted panel of inquiry as required by law. In other words, the decision has no force or avail in law due to the lack of quorum.

In view of the above finding, there is no necessity to go into the merits of the application.

I grant the reliefs to the Petitioner as prayed for in paragraphs (b)-(d) of the prayer to the petition. Let the parties bear their own costs.

Before I part with this Judgment, I must place on record my displeasure at how members of the Consumer Affairs Authority act in discharging their professional duties. This Court has, in the recent past alone, quashed several decisions of the Authority on the basis of lack of quorum. It is regrettable that it is consumers who are at the receiving end of these decisions of Court and not members of the Authority who draw their salaries from the taxpaying public, including the said consumers. I hope the subject Minister will make serious note of the matter and take immediate steps to remedy this situation.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal