

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

In the matter of an application for writs in the nature of Certiorari, Mandamus and Prohibition under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. CASE NO. WRT/0137/19

1. U. Prasanna Deepal,
No. 39/68, Hospital Road,
Wettewa, Mathugama.
2. P.H. Dimuthu Asanka,
Dimuthu Pharmacy,
Ratnapura Road, Baduraliya.
3. W.D.W. Kumara Rodrigo,
No. 198, Kalutara Road,
Mathugama.
4. L.H. Ananda,
No. 45, Janasavi Udagama,
Agalawatta.
5. H.A. Chandra Kumara,
Siri Sewana, Ovitigala,
Weliketiya, Mathugama.
6. W.A.S. Chaminda Wickramaarachchi,
No. 345/2, Kalutara Road,
Mathugama.

7. H.A. Janaka,
No. 36, Ridirekagama, Agalawatta.
8. K.D.S. Bandu Prasanna,
No. 158/18, Golden Field,
Viharagama Road, Bellana.
9. M. Pushpa Kumari,
No. 107/5D, Kurunduwatta,
Beruwala.
10. S.D. Sarath Gamini,
No. 23, D.A. Munasinghe Mawatha,
Mathugama.
11. M.A. Kanchana Tharanga,
“Samagi”, Ambagahahena,
Dodangoda.
12. J.A.D.M. Shantha Kumara,
No. 206/3, Sri Hemaloka Mawatha,
Yatiana, Agalawatta.
13. S.P. Kumara Amarasekara,
No. 266C, Haritha Wimana,
Udawela, Agalawatta.
14. R. Samantha Dissanayake,
Abhayaraja Mawatha,
Kadiradola, Mathugama.
15. K.C. Munasinghe,
No. 53, Maddegoda Road, Mathugama.
16. M.A. Kawindu Rukshan,
No. 310, Agalawatta Road,
Wettewa, Mathugama.

17. K.G.Y. Maduranga Chandrasiri,
No. 58/3, Koswattagoda Road,
Mathugama.
18. K.K.D. Ananda Daya Ranjith,
“Suhada Uyana”,
Welimanana, Mathugama.
19. D.F. Munasinghe,
“Gyara”, Gankanda Road,
Badugama, Mathugama.
20. A.K. Jayasinghe,
Alubogaha Watta,
Badugama, Mathugama.
21. N.L. Thewarapperuma,
Gankanda Road, Badugama,
Mathugama.
22. M.A. Chaminda Jagath Kumara,
Agalawatta Motors, Kalawellawa Road,
Agalawatta.
23. K.R. Buddhika Ranasinghe,
No. 20, Golden Field,
Viharagama Road,
Bellana.
24. G.S. Asanka Amarasekara,
No. 44/1, Dharmaraja Mawatha,
Panthiya, Mathugama.
25. T. Kumuduni Wijesinghearachchi,
No. 310, Agalawatta Road,
Wettewa, Mathugama.

26.D. Dilani Priyanka,
No. 36, Himbutuwilalanda,
Vilpatha, Dodangoda.

PETITIONERS

Vs.

1. Western Province Provincial Passenger Transport
Authority,
No. 89, “Ranmagapaya”,
Kaduwela Road, Battaramulla.

2. Mr. Thusitha Kularathne,
The Chairman,
Western Province Provincial Passenger Transport
Authority,
No. 89, “Ranmagapaya”,
Kaduwela Road, Battaramulla.

2A.Mr. O.W. Prasanna Sanjeewa,
The Chairman,
Western Province Provincial Passenger Transport
Authority,
No. 89, “Ranmagapaya”,
Kaduwela Road, Battaramulla.

2B.Mr. Gamini Jasinghe,
The Chairman,
Western Province Provincial Passenger
Transport Authority,
No. 89, “Ranmagapaya”,
Kaduwela Road, Battaramulla.

3. Mr. Kumara Wijerathnayake,
The Deputy General Manager,
Western Province Provincial Passenger Transport
Authority,
No. 89, “Ranmagapaya”,
Kaduwela Road, Battaramulla.

3A.Mr. Asoka Wickramaarachchi,
The Deputy General Manager,
Western Province Provincial Passenger Transport
Authority,
No. 89, “Ranmagapaya”,
Kaduwela Road, Battaramulla.

4. Mr. Mahesh Silva,
The manager,
Western Province Provincial Passenger Transport
Authority – Regional Office,
5th Floor, District Secretariat Complex,
Kalutara.

4A.Mr. Janath Perera,
The Manager,
Western Province Provincial Passenger Transport
Authority – Regional Office,
5th Floor, District Secretariat Complex,
Kalutara.

5. Hon. Lalith Wanigarathne,
The Minister of Transport, Co-operative
Development and Trade, Housing and
Construction, Estate Infrastructure, Industrial
and Rural Development,
Western Province.

5A.Hon. Roshan Gunathilaka,
The Governor of Western Province,
No. 204,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

5B.Hon. Hanif Yusuf,
The Governor of Western Province,
No. 204,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

6. Hon. Arjuna Ranatunga,
The Minister,
The Ministry of Transport and Civil Aviation,
7th Floor, Sethsiripaya, Stage II,
Battaramulla.

6A.Hon. Gamini Lokuge,
The Minister,
The Ministry of Transport and Civil Aviation,
7th Floor, Sethsiripaya, Stage II,
Battaramulla.

6B.Hon. Dr. Bandula Gunawardena,
The Minister,
The Ministry of Transport and Highways,
7th Floor, Sethsiripaya, Stage II,
Battaramulla.

6C.Hon. Bimal Ratnayake,
The Minister,
The Ministry of Transport, Highways, Ports and
Civil Aviation,
7th Floor, Sethsiripaya, Stage II,
Battaramulla.

7. National Transport Commission,
No. 241, Park Road,
Colombo 05.

8. Mr. Janaka Mallimarachchi,
The Chairman,
National Transport Commission,
No. 241, Park Road,
Colombo 05.

8A.Mr. Sashi Welgama,
The Chairman,
National Transport Commission,
No. 241, Park Road,
Colombo 05.

8B.Mr. M.A.P. Hemachandra,
The Chairman,
National Transport Commission,
No. 241, Park Road,
Colombo 05.

**8C.Dr. Bandura Dileepa Witharana,
The Chairman,
National Transport Commission,
No. 241, Park Road,
Colombo 05.**

9. Mr. J.K. Jayasinghe,
Jayasiri Smart Hotel,
No. 85, Main Street,
Pitigala.

10. Mr. W. Tharanga Ranjan,
No. 311/5, Badugama,
Mathugama.

11. D.S. Gunasekara (Pvt) Ltd,
No. 38, Wimalawatta Road,
Nugegoda.
12. Mr. H. Chandana Mahesh,
No. 102/3, Andagala Road,
Mathugama.
13. Mr. Nimal Jayalath,
No. 205, Andagala Road,
Mathugama.
14. Mr. Mallawaarachchige Jayantha,
Jayantha Tyre House,
Baduraliya Road,
Agalawatta.
15. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J.

COUNSEL : Rushdie Habeeb with Rizwan Uwaiz for the Petitioners.

Samini Hettiarachchi with Kapila Liyanagamage for the 1st – 4th
Respondents.

Yuresha Fernando, DSG with Dilantha Sampath, SC for the 5th,
6th, 7th, and 8th Respondents.

ARGUED ON : 25.06.2025

DECIDED ON : 27.08.2025

JUDGEMENT

K.M.G.H. KULATUNGA, J.

1. The petitioners are members of the Luxury Omnibus Owners' Association of Matugama. They claim to be holders of permits to operate passenger transport buses on Route No. 430, plying between Matugama and Colombo. The petitioners initially filed this application with 13 prayers; however, when this was taken up for argument on 25.06.2025, the learned Counsel for the petitioner, Mr. Rushdie Habeeb, informed that the petitioners will limit this application to relief prayed for by prayers (h) and (i). The said prayers are as follows:

“(h) Grant and issue a writ of prohibition preventing the 1st respondent from regulating the Passenger Service Permit Route No. 430 Matugama – Colombo via Dodangoda – Kottawa/Kadawatha and issuing permit to buses on the Expressway and preventing from issuing any further permit.

“(i) Grant and issue a writ of mandamus compelling the National Transport Commission to regulate the Passenger Service Permit Route No. 430 Matugama – Colombo via Dodangoda – Kottawa/Kadawatha and issuing permit to buses on the Expressway and issue permit as per the regulation in the National Transport Act.”

2. The sum total of the complaint of the petitioner is that the 1st respondent Western Province Provincial Passenger Transport Authority is now issuing permits to operate luxury buses in respect of Route No. 430 Matugama – Colombo via the Expressway, and that the 1st respondent does not have statutory power to so issue permits to operate buses along the Expressway as it is a subject matter that comes within the power of the central government. It is the position of the petitioners that the authority competent and lawfully empowered to regulate passenger transport along the Expressway is the National Transport Commission (“NTC”). The legal basis of this argument is that Expressways are national Highways, in view of the Gazette Notification

published in Gazette Extraordinary No. 1707/18 dated 26.05.2011. The argument therefore, is that Article 154 (G) (1) provides for Provincial Councils to make statutes applicable and in respect of the Provincial Council List, and that National Highways, bridges, and ferries on National Highways are excluded. It is further submitted that Article 154 (G) (7) clearly provides that Provincial Councils will have no power to make statutes in respect of the Reserved List, which includes National Transport, including railways, highways declared by or under law made by Parliament to be National Highways. As the Southern Expressway is now designated as National Highway, all transport along such Expressways should be within the purview of the central government and the NTC.

3. In support of this argument, the petitioners rely on P-23 the Attorney General's letter of advice dated 21.03.2017. It was also submitted that it is the NTC that is authorized to issue passenger transport permits in respect of transport of passengers along National Highways and Expressways by virtue of Section 24 of the National Transport Commission Act, No. 37 of 1991 as opined by the Attorney General.
4. As opposed to this, the Counsel for the 1st to 4th respondents submitted that, passenger carriage services between Matugama and Colombo via Dodangoda – Kottawa/Kadawatha interchanges is within the Western Province. As the terminal ends of the said route are within the Western Province, the Provincial authority is empowered by virtue of Item 08 of list 1 the Provincial Council List of the Ninth Schedule to the Constitution. Item 08 of list 1 empowers the regulation of road passenger carriage services within the Province. Relying on the above, it was argued that the Provincial authorities are empowered to regulate the passenger carriage services within the Province. This power is so vested without distinction as to the category of roads, be it a National Highway or otherwise.

5. According to the said Attorney General's Advice letter dated 21.03.2017 (P-23), the National Highways are said to be excluded from the Provincial Council List and by virtue of Section 8 (1) and 46H of the National Transport Commission Act, No. 37 of 1991 (as amended) read with Regulation I of 1998, the NTC is said to have been vested with the authority to issue passenger service permits. It is also opined therein that by virtue of Section 8 of the National Thoroughfares Act, No. 40 of 2008, the Minister is empowered by an Order published in the Gazette to declare any route or public route or class of roads or public road to be a National Highway. Then, by virtue of Section 9 (1) of the National Thoroughfares Act, the Minister is also empowered to declare any such National Highway as an Expressway. The said Sections are as follows:

8. (1) The Minister may by Order published in the Gazette declare any road or public road or classes of roads or public roads to be a national highway or national highways. as the case may be.

9. (1) The Minister may by Order published in the Gazette designate a national highway declared in terms of section 8, to be

(a) an expressway; or

(b) a restricted access highway.

6. The Hon. Attorney General has opined that the power to issue Passenger transport service permits pertaining to National Highways and Expressways, be it within or outside the Province or between the Provinces, is vested with the NTC. Based on this, the petitioners impugn the authority of the 1st respondent Provincial Passenger Transport Authority to issue permits along the Expressway. To this end, the Hon. Attorney General has relied on Item 06 of the List I to the Constitution (Provincial Council List) which reads as follows:

6. Roads and bridges and ferries thereon within the Province, other than—

(a) national highways;

(b) bridges and ferries on national highways.

7. A plain reading of Item 06 no doubt appears to exclude National Highways. However, Item 08 of the said List 1 specifically provides as follows:

8. Regulation of road passenger carriage services and the carriage of goods by motor vehicles within the Province and the provisions of inter-provincial road transport services.

8. The effect and import of Item No. 08 is that the Provincial Authority is empowered to regulate road passenger carriage services within the Province. At this juncture, it is relevant to note that the petitioners themselves are holders of transport permits to transport passengers along the Colombo-Galle Highway. It was admitted by the petitioners that the road popularly known as “Galle Road” now designated as an “AA” Road, is a National Highway. If the argument advanced is considered in that form, along with the Attorney General’s advice, the Provincial Transport Authority would not be competent to issue the permits now held by the petitioner to operate the luxury bus service along Route No. 430 between Matugama and Colombo along the National Highway, the “Galle road”. The Hon. Attorney General in expressing his opinion, has failed and not adverted to or considered the effect and import of Item No. 08 of List 1. No doubt, in general terms, National Highways are excluded under Item 06 of the said List. Subject to this exclusion, Item No. 08 of the said List specifically provides for the regulation of road passenger carriage services. Accordingly, it is clear that the management, operation, and such other matters pertaining to national highways had been taken out of the purview and authority of Provincial Councils, but the regulation of *road passenger carriage services* within the province had specifically been saved and retained within the Provincial Council’s authority.
9. Thus by virtue of item 6 of list 1, National Highways have been excluded from the provincial list. That to my mind is the management and operation of Highways. But by item 8 of list 1 regulation, passenger

transport within the province is retained in the provincial council list. This was confirmed by Justice Mark Fernando in SC special determination No. 7 of 1989 (P PA/2/PC/19) SCM 22.02.1990 where it was held that, “the council can make a statute in respect of the provision of intra-provincial road transport services.” The first limb of item 8 of list 1 is in respect of the “Regulation” of passenger carriage services within the province. This makes no express exclusion or exception as to the regulation of passenger carriage services along National Highways within the province.

10. The Writs of Prohibition and Mandamus sought is in respect of the issue of route permits to ply along the expressway between Mathugama and Colombo (route No. 430). The terminal ends of this route are within the western province. Accordingly, as I see, the power to regulate passenger transport within the province is vested with the provincial authorities. That being so, the 1st respondent is vested with the power to regulate passenger transport within the province including the National Highways.
11. In these circumstances, I am not convinced by the arguments as advanced on behalf of the petitioners. Thus, the said arguments advanced on behalf of the petitioners are rejected. Accordingly, I find that the petitioners are not entitled to the relief as prayed for and there is no basis in law to grant the relief as prayed for by prayers (h) and (i).
12. The application is accordingly dismissed subject to cost in a sum of Rs. 130,000/- to be paid to the 1st respondent. Each petitioner is to pay Rs. 5,000/- thereof respectively.

Application is dismissed subject to costs.

JUDGE OF THE COURT OF APPEAL