

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

**C.A. CASE NO. WRT/0394/19**

1. Hemantha Prematilaka Waragoda  
Withanage,  
No. 24, Leynbaan Street,  
Fort,  
Galle.
2. Madduma Vidana Gamachchige  
Ramyachandra Gunasekera,  
No. 33, Sri Dharmarama Road,  
Fort,  
Matara.
3. Sunil Gunasekera,  
No. 279/2,  
Halambagaswala,  
Thissamaharamaya.

**PETITIONERS**

**Vs.**

1. Dr. R. H. Samaratunga,  
Secretary to the Treasury,  
Ministry of Finance,  
The Secretariat, Colombo 01.

1A. K. M. Mahinda Siriwardane,  
Secretary to the Treasury,  
Ministry of Finance,  
The Secretariat, Colombo 01.

2. M. K. P. Kumara,  
Director,  
Department of Trade and Investment Policy,  
Room No. 337, 3<sup>rd</sup> Floor,  
Ministry of Finance,  
The Secretariat, Colombo 01.

2A. K. A. Vimalenthirarajah,  
Director,  
Department of Trade and Investment Policy,  
Room No. 337, 3<sup>rd</sup> Floor,  
Ministry of Finance,  
The Secretariat, Colombo 01.

3. Sanath Perera,  
Additional Director General,  
Treasury Operations Department,  
Ground Floor, P.O. Box 1550,  
Ministry of Finance, Colombo 01.

3A. H. C. D. L. Silva,  
Additional Director General,  
Treasury Operations Department,  
Ground Floor, P.O. Box 1550,  
Ministry of Finance, Colombo 01.

4. R. C. De Zoysa,  
Chief Secretary,  
Southern Provincial Council,

Chief Secretariat office,  
S. H. Dahanayake Mawatha, Galle.

4A. Sumith Alahakoon,  
Chief Secretary,  
Southern Provincial Council,  
Chief Secretariat office,  
S. H. Dahanayake Mawatha, Galle.

5. Prasadini Bomiriarachchi,  
Assistant Chief Secretary (Establishments),  
Southern Provincial Council,  
Chief Secretary's Office,  
S. H. Dahanayake Mawatha, Galle.

5A. Prasadini Bomiriarachchi,  
Assistant Chief Secretary (Establishments),  
Southern Provincial Council,  
Chief Secretary's Office,  
S. H. Dahanayake Mawatha, Galle.

6. Ranatunga Mudiyanse Indrani Sriyani  
Nambukara Vithana,  
Secretary,  
Provincial Co-operative Employees Commission  
Southern Province,  
Planning Secretariat Building (01<sup>st</sup> Floor),  
S. H. Dahanayake Mawatha, Galle.

6A. Jayantha Liyanage,  
Secretary,  
Provincial Co-operative Employees Commission  
Southern Province,  
Planning Secretariat Building (01<sup>st</sup> Floor),  
S. H. Dahanayake Mawatha, Galle.

7. Chandrika Wickramasinghe,  
Acting Secretary,  
Provincial Co-operative Employees Commission  
(Southern Province),  
Planning Secretariat Building (01<sup>st</sup> Floor),  
S. H. Dahanayake Mawatha, Galle.
8. Hemal Gunasekera,  
Governor - Southern Province,  
Governor's Secretariat,  
Lower Dickson Road, Galle.
- 8A. Willy Gamage,  
Governor - Southern Province,  
Governor's Secretariat,  
Lower Dickson Road, Galle.
9. A. U. Welarathna,  
Governor's Secretary,  
Southern Province,  
Governor's Secretariat,  
Lower Dickson Road, Galle.
- 9A. Dipika Kumari Gunaratne,  
Governor's Secretary,  
Southern Province,  
Governor's Secretariat,  
Lower Dickson Road, Galle.

**RESPONDENTS**

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

**COUNSEL :** Chamara Fernando and Meleesha Perera, instructed by Niluka  
Dissanayake, for the Petitioner.

Ishan Rathnapala, SSC, for the Respondents.

**ARGUED ON** : 26.08.2025

**DECIDED ON** : 23.09.2025

**JUDGEMENT**

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

1. The petitioners have preferred this application seeking a writ of *certiorari* and *mandamus* to quash and direct the decision in P-20 pertaining to the refusal to issue a concessionary permit for the importation of vehicles. The petitioners were the Chairman and members of the Co-operative Employees' Commission of the Southern Province. They have been so appointed with effect from 20.09.2014. All three of them have applied for permits to import vehicles on concessionary terms under the Trade and Investment Policy Circular No. 01/2016. The said applications have been rejected and returned by letter P-20 on the basis that the petitioners do not qualify and are not eligible for the said permit, as the Provincial Corporative Commission does not qualify under Clause 1.13 of the Circular No. 01/2018. Accordingly, the petitioners have preferred this application to quash the decision communicated by P-20.
2. This application was taken up for argument on 26.08.2025. Then the parties were given time to tender their post-argument written submissions. However, as requested by the parties, the written submissions previously tendered on 21.03.2023 and 20.03.2023 were considered.
3. The petitioners' position and argument is that the Provincial Co-operative Employees' Commission (hereinafter referred to as "the Commission") is specifically recognized under and in terms of item 17.3 of List I (Provincial Council List) of the Ninth Schedule to the Constitution and is established under the Provincial Statute enacted by Statute No. 05 of 2019 (P-6). It is thus argued that the said Commission is established as per the

provisions of the Constitution and thereby qualifies under Section 1.13 of Circular No. 01 of 2018 (P-14) for eligibility. It is further submitted that prior to this, members of the said Commission have been issued with such concessionary permits to import vehicles. In support thereof, P-08, a letter dated 16.09.2013 issued on behalf of the Director General, Treasury Operations Department, is relied on. According to which, it is opined that members of the Provincial Co-operative Employees' Commission qualify to be eligible for such permits, under the then Circular No. 01/2013 read with Clause 01.01 (ඇ).

4. As opposed to this, the position of the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> respondents is that the said Commission is established by a Provincial Statute and does not qualify, as it is not a Commission established by the provisions of the Constitution as per Clause 1.13 of Circular No. 01/2018. Further, the Additional Director General's letter dated 16.03.2013, marked P-08, is incorrect and *ultra vires*, and it relates to a previous Circular bearing No. 01/2013 (P-7), and accordingly the petitioner cannot have any legitimate expectation. The applicable Circulars as at the relevant time are 01/2016 and 01/2018 (P-09 (a) and P-14, respectively). It is also submitted that the petitioners are guilty of laches or delay.
5. I will now consider if the petitioners qualify and are eligible as claimed by them. The operative clause of the relevant Circular, P-14, is 1.13. It reads as follows:

**“01. නිමිකම් ලබන අවස්ථා**

1.13 ආණ්ඩුක්‍රම ව්‍යවස්ථාව මගින් සලසා ඇති විධිවිධාන ප්‍රකාරව පිහිටුවා ඇති කොමිෂන් සභාවක වසර තුනක (3) සක්‍රීය සේවා කාලයක් සහිත කොමිෂන් සභා සභාපතිවරුන් හා සාමාජිකයින්.”

**“01. Entitled categories**

1.13 Chairman and members who have completed three (3) years of active service period at a Commission established as per the Provisions of the Constitution.”

According to the above, such Commission should be established as per the provisions of Constitution. As I see, the Provincial Co-operative Employees' Commission is established under the Provincial Statute No. 5 of 2019. All that the Constitution provides for by item 17 of List I is that the Provincial Council is empowered to make statutes in respect of the said subject matter, namely the Provincial Co-operative Employees' Commission. The said Schedule to the Constitution does no more than provide for and declare the authority of the relevant Provincial Council to legislate in respect of such matters. This, by no stretch of the imagination, can be deemed, interpreted, or considered as being provision to establish such Commission by the Constitution. What is contemplated by the said Clause 1.13 of the Circular is that the provisions as to the establishment and creation of such Commission should be provided for by and in the Constitution in that form. The Constitution merely specifies the authority empowered to make or promulgate enabling statutes to create and establish such a Commission. The statutory provisions as to the establishment and creation of the said Commission are provided by the said Provincial Statute. For all purposes, the said Commission, namely the Provincial Co-operative Employees' Commission, is established by the Co-operative Employees' Commission of the Southern Province, Statute No. 01/1998, and not by the Constitution. Accordingly, the decision made and conveyed by P-20, to my mind, is correct and lawful.

6. Then, the petitioners referred to a list of 13 institutions which are listed as being Commissions entitled to receive such import permits. The said list is referred to and is contained in the letter dated 17.08.2018 of the Director (Legal) of the Ministry of Finance and Mass Media (*vide* R-2). The petitioners submit that items 'e' and 'k', the Human Rights Commission of Sri Lanka and the Provincial Public Service Commission listed therein, cannot be considered as Commissions established under the provisions of the Constitution. Thus, it is argued that if those Commissions are so

included, the Provincial Corporative Employees' Commission should also be included (*vide* paragraph 6 of the written submissions).

7. The sum total of this argument is that, as the said two have been wrongly listed, the Provincial Employees' Co-operative Commission also should be considered and recognized to qualify under Clause 1.13 of Circular P-20. I am unable to accept this argument. An improper or incorrect listing of any other institution cannot give rise to a right to demand that an institution that does not qualify be deemed to be considered to be so qualified. This is akin to creating a right by two wrongs, so to say. The decision made by P-20 is based on the simple interpretation of Clause 1.13 of P-14. A wrong and erroneous decision on a previous occasion cannot create a legitimate expectation as claimed by the petitioners. No doubt, legitimate expectation is a ground which is accepted and well entrenched in our law. When such an expectation is created by a representation, it correspondingly creates a right in such person to have the same enforced. This right, in such person, would thus create a corresponding duty upon such public official who is statutorily empowered and authorised to give effect to the same. Legitimate expectation may be procedural or substantive.
8. I will now endeavour to consider the legal position and the principle of legitimate expectation as it is relevant to this application. Prof. Craig, in 'Administrative Law' (7<sup>th</sup> Ed., at p.677), defines procedural and substantive legitimate expectation as follows:

*"The phrase '**procedural legitimate expectation**' denotes the existence of some process right the applicant claims to possess as the result of a promise or behaviour by the public body that generates the expectation..... The phrase '**substantive legitimate expectation**' captures the situation in which the applicant seeks a particular benefit or commodity, such as a welfare benefit or a license, as the result of some promise, behaviour or representation made by the public body."*



The ideology of ‘substantive legitimate expectation’ originated in the landmark case of ***R vs. Ministry of Agriculture Fisheries and Food, ex parte Hamble (Offshore) Fisheries Ltd*** [1995] 2 All ER 714, where Sedley, J., held as follows:

*“Legitimacy in this sense is not an absolute. It is a function of expectations induced by government and of policy considerations which militate against their fulfilment. The balance must in the first instance be for the policy maker to strike; but if the outcome is challenged by way of judicial review, I do not consider that the Court's criterion is the bare rationality of the policy maker's conclusion. While policy is for the policy-maker alone, the fairness of his or her decision not to accommodate reasonable expectations which the policy will thwart remains the Court's concern (as of course the lawfulness of the policy). **To postulate this is not to place the judge in the seat of the Minister...but it is equally the court's duty to protect the interests of those individuals whose expectation of different treatment has a legitimacy which in fairness outtops the policy choice which threatens to frustrate it.**” [emphasis added].*

The abovementioned dictum has been cited with approval in ***Dayaratne vs. Minister of Health and Indigenous Medicine*** (1999) 1 SLR 393, in ***Nimalsiri vs. Fernando*** (SC/FR/256/2010, decided on 17<sup>th</sup> September 2015), and in ***M. R. C. C. Ariyaratne and others vs. Inspector General of Police and others*** (SC/FR/444/2012, decided on 30<sup>th</sup> July 2019). In ***M. R. C. C. Ariyaratne and others vs. Inspector General of Police and others*** (supra), Prasanna Jayawardena, PC, J., after an extensive and all-encompassing analysis on the doctrine of legitimate expectation, cited with approval the following dicta of Dehideniya, J.'s decision in ***Zamrath vs. Sri Lanka Medical Council*** (SC/FR/119/2019, decided on 23.07.2019), as the rationale underlying the doctrine of legitimate expectation:

*“The legitimate expectation of a person ... further ensures legal certainty which is imperative as the people ought to plan their lives, secure in the knowledge of the consequences of their actions. The perception of legal certainty deserves protection, as a basic tenet of the rule of law which this court attempts to uphold as the apex court of the country. The public perception of legal certainty*

*becomes negative when the authorities by their own undertakings and assurances have generated legitimate expectations of people and subsequently by their own conduct, infringe the so generated expectations.”*

9. In **R. vs. North and East Devon Health Authority, ex p Coughlan** [2001] QB 213, Lord Woolf, M.R. (giving the judgment of the Court consisting of himself, Mummery and Sedley L.JJ.), as follows:

*“Where the court considers that **a lawful promise or practice** has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power.”* [emphasis added.]

The above dicta confirms that an erroneous decision cannot create a legitimate expectation. Further, in **Siriwardane vs. Seneviratne and four others** [2011] 2 SLR 1, Dr. Shirani Bandaranayake, J. (as her Ladyship then was), held as follows:

*“A careful consideration of the doctrine of legitimate expectation, clearly shows that, whether an expectation is legitimate or not is a question of fact. This has to be decided not only on the basis of the application made by the aggrieved party before court, but also **taking into consideration whether there had been any arbitrary exercise of power by the administrative authority in question.**”* [emphasis added.]

10. Thus, if a past promise, practice, or policy is found to be premised on a wrong or erroneous interpretation, which is not legitimate, then the change of policy or procedure to bring it within the lawful and correct interpretation cannot create a legitimate expectation. There should be a previous lawful and legitimate promise, practice, or policy to induce or create a legitimate expectation. The previous practice of issuing permits or the holding out that the Commissioners of the said Commission are entitled to permits are based on the erroneous interpretation of a previous Circular, namely Circular No. 01/2013. That being so, the current Circular (P-14) premises the qualification on such Commission

being established as per the provisions of the Constitution. As considered hereinabove, the previous interpretation and the policy based thereon were erroneous and not legitimate. Accordingly, such a promise, practice, or policy, which is neither lawful nor legitimate, cannot create a legitimate expectation in the petitioners as claimed. Accordingly, I hold that the petitioners have no legitimate expectation as claimed.

11. In the above circumstances, I find that the petitioners have failed to establish any basis in law or otherwise that entitles them to the relief as prayed for. The impugned interpretation and the determination are correct and lawful.

12. Accordingly, I am left with no option but to refuse and dismiss this application. However, I make no order as to costs. Accordingly, this application is refused and dismissed.

Application is dismissed.

**JUDGE OF THE COURT OF APPEAL**