

**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 under and in terms of Article 140 of the Constitution of the Republic.

**Court of Appeal Case No:**  
**CA/WRIT/677/2023**

1. S.M. Janaka Nishantha,  
Yatadolawaththa, Matugama
2. S.M. Roshan Chaminda,  
Lewwanduwa, Walipanna.
3. P.K. Aruna Shantha,  
No. 170, Aluthgama Road,  
Matugama.
4. Weragalage Sisira,  
Siriwijaya, Liyannawaththa,  
Walagedara.
5. N.H. Indika Nanayakara,  
No. 352, D/7A, Rajasinghe  
Mawatha,  
Hewagama, Kaduwela.
6. W.W. Nishantha Rohan Mendis,  
03<sup>rd</sup> Lane, New Town, Badhugama,  
Matugama.
7. A.C. Hettiarachchi,  
Walikatiya, Ovitigala, Matugama.
8. Vipul Chandana Jayalath,  
No. 201/A, Jayalath, Galmaththa.
9. P.V. Thilakarathna,  
Pannila, Matugama.

10. P.V. Vinodhani Kalpani,  
Palakatiyawaththa, Pannila,  
Matugama.

**PETITIONERS**

**Vs.**

1. National Transport Commission,  
No. 241, Park Road,  
Colombo 05.
2. Mr. Shashi Welgama,  
Chairman,  
National Transport Commission,  
No. 241, Park Road,  
Colombo 05.
3. Road Passenger Transport Authority  
(WP),  
No. 89, Ranmagapaya,  
Kaduwela Road, Battaramulla.
4. O.W. Prasanna Sanjeewa,  
Chariman,  
Road Passenger Transport Authority  
and Road Service Permit Tender  
Committee,  
No. 89, Ranmagapaya,  
Kaduwela Road, Battaramulla.
5. A.M.S. Malkanthi,  
Director of Road Passenger  
Transport Authority,  
No. 89, Ranmagapaya,  
Kaduwela Road, Battaramulla.
6. R.M.D. Kumari,  
Director of Road Passenger  
Transport Authority,  
No. 89, Ranmagapaya,  
Kaduwela Road, Battaramulla.

7. N.K. Miranda,  
Director of Road Passenger  
Transport Authority,  
No. 89, Ranmagapaya,  
Kaduwela Road, Battaramulla.
8. Indika Hapugoda,  
Director of Road Passenger  
Transport Authority,  
No. 89, Ranmagapaya,  
Kaduwela Road, Battaramulla.
9. M. Wicramarachchi,  
Director of Road Passenger  
Transport Authority,  
No. 89, Ranmagapaya,  
Kaduwela Road, Battaramulla.
10. H.M. Lakidu Gajasen Herath,  
Director of Road Passenger  
Transport Authority,  
No. 89, Ranmagapaya,  
Kaduwela Road, Battaramulla.
11. H.G. Korlearachchi,  
Director of Road Passenger  
Transport Authority,  
No. 89, Ranmagapaya,  
Kaduwela Road, Battaramulla.
12. M.L. Liyanarathna,  
Director of Road Passenger  
Transport Authority,  
No. 89, Ranmagapaya,  
Kaduwela Road, Battaramulla.
13. Chandima Dissanayake,  
Director of Road Passenger  
Transport Authority,  
No. 89, Ranmagapaya,  
Kaduwela Road, Battaramulla.

14. Manager,  
Western Province Provincial  
Passenger Transport Authority –  
Regional Officer,  
5<sup>th</sup> Floor, District Secretariat  
Complex,  
Kalutara.

## **RESPONDENTS**

**Before:** Mayadunne Corea, J  
Mahen Gopallawa, J

**Counsel:** Sandamal Rajapaksha for the Petitioners.  
Kapila Liyanagamage for the 3<sup>rd</sup> to 6<sup>th</sup> and 8<sup>th</sup> to 14<sup>th</sup> 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 3<sup>rd</sup> and 4<sup>th</sup> Respondents to grant new permits for addition of new buses for the Route No. 441*
- (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. 441 (Aluthgama to Matugama)*

- (d) *Grant and issue a mandate in the nature of Writ of Mandamus compelling the 3<sup>rd</sup> to 14<sup>th</sup> Respondents to hold a survey regarding the number of passengers who use the buses on Route No. 441”*

The facts of the case briefly are as follows. The Petitioners allege that they have obtained permits from the 1<sup>st</sup> Respondent to operate passenger services from Aluthgama to Matugama on Route No. 441. A new time schedule had been introduced in 2023 by the 3<sup>rd</sup> Respondent, resulting in a surplus of buses on the said route. The Petitioners state that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents have called for tenders to grant new permits for the bus route from the Aluthgama end despite the surplus of buses. It is the contention of the Petitioners that the decision to award tenders for two new buses 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 two new buses to Route No. 441 would create a surplus of buses and result in increased competition for passengers, fuel, maintenance services and other operational resources. Further, the Petitioners state that this would also affect the income generated from the operation of passenger services which is used for the payment of leasing instalments, maintenance of buses, and to support families of owners, drivers and conductors.

The Petitioners contend that the 3<sup>rd</sup> 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 3<sup>rd</sup> Respondent had not acted in accordance with any policy or guidance issued by the 1<sup>st</sup> 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. 441. The Respondents further contended that according to their findings the buses have been

operating on all days, and thus, that they should have one rest day or a standby day per week in order to attend to regular maintenance and repairs and to be available in the instance of a breakdown of another bus. It is their contention that the Respondents at all times have acted according to the laid down procedure and within the scope of the statutory power vested with them.

### **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. 441 from Matugama to Aluthgama and from Aluthgama to Matugama (P1 - P12). The parties are not at variance that the 3<sup>rd</sup> Respondent is the Authority that is empowered to issue route permits. The Petitioners allege that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents have called for tenders to grant route permits for two buses to ply on the Route No. 441 Aluthgama – Matugama (P17). As per P15 and P16 it is evident that there are 11 buses operating from the Aluthgama end while 13 buses operate daily from the Matugama end. It is contended that while all 11 buses that commence its journey from the Aluthgama end has to operate the entire week without a break. Hence, it is not in dispute that the buses plying the Aluthgama to Matugama end have no rest day. For buses that operate on the Matugama end, one bus is kept on standby per week. Hence, the argument that calling for tenders to issue two more route permits for the Aluthgama end would result in two buses being kept on standby every week.

### **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 two additional route permits 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 to call 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 section reads as follows:

“6

(1) ...

(අ) ඛස්නාහිර පළාත ඇතුළත මහජන මගී ප්‍රවාහන අවශ්‍යතා සපුරාලීම සඳහා ප්‍රමාණවත්, පිළිගත් මනා තත්ත්වයක ඛස් 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, කාර්යයන් හා කතර්වෘයන් 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 පෙන්වීම හා උපදෙස් වලට අනුකූල විය යුතුය'

The thrust of the Petitioner's argument is that prior to taking the decision to award two additional route permits, the 3<sup>rd</sup> - 14<sup>th</sup> 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 3<sup>rd</sup> Respondent (6(1)(ආ)). It is also observed that under section 6(1)(අ), the 3<sup>rd</sup> 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 3<sup>rd</sup> 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 sufficient material 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 3<sup>rd</sup> 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 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> Respondents have stated that prior to the impugned sub tender for Route No. 411 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 as 3R1, P15 and P16, it is evident that though there are 13 buses plying from Matugama to Aluthgama, there are only 11 buses from Aluthgama to Matugama. 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 carry out regular maintenance of the buses and provide a rest day for the crew. However, though the Muthugama end has 2 buses on standby every week it is not so on the Althugama end as there are only 11 buses. The said buses have to operate on all 7 days of the week. Which the Respondents contended is not a healthy situation as there are no dates available for the said buses to be sent in for maintenance. Hence, they argued that tenders were called to add two new buses to make the number of buses from Aluthgama end to the Matugama end becomes equal. It is their contention that then an undisrupted transport service can be maintained as there will be 2 buses on standby and the said standby buses can be subjected to a mechanical inspection at least once a week. It was also argued that in the absence of such standby buses, if there is a sudden emergency or breakdown there is no replacement bus to operate on the Aluthgama end. Hence, the transport timetable will be disrupted and the greater public will have to undergo numerous difficulties. In my view, this is what is attempted to be avoided by inserting 6(1)(අ) in the Provincial Statute. It is also observed that considering the documents marked 3R1, 3R2 3R3, P15 and P16 this Court is inclined to accept the submissions of the learned Counsel appearing for the Respondents.

In my view, the buses are providing a public service and the utmost importance should be given in this instance is to provide an 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 to allow at least one standby day for the buses that operate on both ends to subject them for regular inspections for maintenance without disrupting the transport service and causing hardship to the commuters.

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 two 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 38 and 39 of the Petition. In my view, to have an efficient and safe passenger transportation service, this should not be the sole 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 3<sup>rd</sup> Respondent Authority. However, in exercising their duties the 3<sup>rd</sup> Respondent should follow and be consistent with the policies and guidelines of the National Transport Commission (hereinafter 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 P17, the 3<sup>rd</sup> 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 3<sup>rd</sup> 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**