

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

**CA. (Writ) Application No: 805/2009**

Basnahira Palatha Magee Pravahana  
Adhikaariye Widhayake Niladhaarenge  
Sangamaya,

Western Province, Provincial Road Passenger's  
Transport Authority,  
No: 59, Robert Gunawardena Mawatha,  
Battaramulla.

And 08 others

**Petitioners**

**Vs.**

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

Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

And 60 others.

**Respondent**

**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 and Prohibition  
under Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

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**C.A. (Writ) Application No. 805/09**

<b><u>BEFORE</u></b>	: Deepali Wijesundera J.
<b><u>COUNSEL</u></b>	: J.C. Weliamuna with Pasindu Silva for the Petitioner. Anusha Samaranayake SSC for 1 <sup>st</sup> and 62 <sup>nd</sup> Respondents. Kapila Liyanagamage for 5 <sup>th</sup> to 9 <sup>th</sup> Respondents.
<b><u>ARGUED ON</u></b>	: 12 <sup>th</sup> February, 2014
<b><u>DECIDED ON</u></b>	: 30 <sup>th</sup> May, 2014

**Deepali Wijesundera J.**

This application has been filed by the petitioner for a writ of certiorari to quash the Cabinet decision marked as **P13** and subsequent instructions based on **P13** marked as **P6, P7, P8, P9, P10** and **P11** issued by the 1<sup>st</sup> respondent. Petitioner has also sought a writ of Prohibition to prohibit the 1<sup>st</sup> to 7<sup>th</sup> respondents from taking over the powers vested in the 5<sup>th</sup> respondent's authority.

Bastian Mawatha and Gunasinghepura bus stands were utilized for inter and intra provincial transport. Both these bus stands were managed by the Western Province Provincial Road Passenger Transport Authority (5<sup>th</sup> respondent) with the concurrence of the Central Government. In June 2009 the 1<sup>st</sup> to 4<sup>th</sup> respondents have taken steps to restrain the 5<sup>th</sup> respondent from managing the bus stands after the said Cabinet decision. The 5<sup>th</sup> respondent and the petitioner have filed the instant application to challenge the vesting of the Bastian Mawatha bus stand in the 1<sup>st</sup> respondent commission.

The petitioner's submission was that the Cabinet did not have the authority to vest the said bus stand in the 1<sup>st</sup> respondent and that the 1<sup>st</sup>

respondent being a regulator cannot be vested with the authority to operate the said bus stand. The petitioner's contention was that though the premises on which the said bus stand stands is owned by the Sri Lanka Railways which is a property belonging to the Central Government it has always been operated by the 5<sup>th</sup> respondent and that this will not justify the vesting of the Bastian Mawatha bus stand in the National Transport Commission. The petitioner further submitted that all bus stands in the country are operated by the Provincial Transport Authorities or Local Authorities, and that in pursuance of the 13<sup>th</sup> Amendment to the Constitution all bus stands hitherto have been run by the Provincial Authorities. The argument of the petitioner was that after the 13<sup>th</sup> Amendment the Cabinet has no authority to take a decision of this nature authorizing the 1<sup>st</sup> respondent to operate a bus stand.

The petitioner referring to the *National Transport Commission Act No. 37 of 1991 and Sri Lanka Transport Board Act No. 27 of 2005* stated that nowhere in the acts it has provided authority to the National Transport Commission to operate bus services or to manage bus stands therefore unless the law is amended the National Transport Commission has no legal authority to operate a bus stand.

The petitioner referring to the 13<sup>th</sup> Amendment and the Constitution stated that the purpose of the 13<sup>th</sup> Amendment was a harmonious devolution and the central and the provinces are required to respect each other and all bus stands in the country are operated by the Provincial Authority, while the Central Government represented by the National Transport Commission enjoyed the regulatory powers over inter provincial passenger transport. The petitioner further stated that the Bastian Mawatha bus stand was one of the main revenue generating sources to the Western Provincial Council.

The learned Senior State Counsel submitted that under the 13<sup>th</sup> Amendment to the Constitution the function of the National Transport Commission comes within the purview of the Central Government and the function of the intra provincial passenger transport services comes under the purview of the Provincial Councils. Consequently the Provincial Councils have been allocated a certain number of bus stands by the Cabinet decision marked as **P3** to facilitate their function of providing intra provincial transport within the provinces.

Learned Senior State Counsel stated that after the 13<sup>th</sup> Amendment and **P3** certain bus stands continued to be retained by the Central Government, including the Bastian Mawatha bus stand. This

land belonged to the Railway Department and was developed with funds from the Central Government and the 1<sup>st</sup> respondent.

The Senior State Counsel for the 1<sup>st</sup> respondent stated that until **P13** the Bastian Mawatha Bus Stand was utilized for both inter and intra provincial passenger service transport and managed by the 5<sup>th</sup> respondent the Central Government decided to utilize the said bus stand only for inter provincial transport and nominated the 1<sup>st</sup> respondent to manage the said bus terminal. It was further stated that the mere physical location of the bus stand within the Western Province does not automatically bring it within the purview of the Western Provincial Council.

The only issue to be decided by this court is whether **P13** Cabinet decision is *ultra vires* on the grounds of devolution of powers by the 13<sup>th</sup> Amendment to the Constitution. The validity of the subsequent documents **P6, P7, P9, P10 and P11** will depend on the validity of **P13** since they have been issued base on **P13**.

Under the provisions of the 13<sup>th</sup> Amendment to the Constitution inter provincial transport that is transport within two or more provinces

which is described as National Transport comes within the purview of the Central Government. And function of transport within the province that is intra provincial transport comes under the purview of the Provincial Councils. The Provincial Councils have been allocated certain bus stands after the 13<sup>th</sup> Amendment by a Cabinet decision while some bus stands continued to be retained by the Central Government. This Cabinet decision is marked and produced as **P3a** and **P3b**. the Cabinet memorandum states thus;

***TRANSFER OF OWNERSHIP OF BUS STANDS BELONGING  
TO THE SRI LANKA CENTRAL TRANSPORT BOARD (SLCTB)  
AND REGIONAL TRANSPORT BOARDS (RTBB)  
TO THE PROVINCIAL COUNCILS***

*At a meeting held in my Ministry on 21.12.95 with the Ministers of Transport of the Provincial Councils, it was pointed out by the letter that these bus stands need urgent development and maintenance work in order to provide the long suffering commuter with improved facilities. As the Provincial Councils and other local bodies were reluctant to invest their funds in this work as long as the ownership of the bus stands remain with the SLCTB, it was decided at this meeting that these bus stands be vested in the respective Provincial Councils, to enable them to carry out the necessary improvements without delay.*

*The above mentioned bus stands do not include the Central Bus Stand at Pettah, which will continue to be managed directly by the SLCTB in view of its special importance in Island wide bus operations.*

Annexure I which gives a list of bus stands vested which is also produced with **P3a** does not mention the Bastian Mawatha and Gunasinghepura bus stands. The Central Government has taken a decision by **P13** for the Bastian Mawatha Bus Stand to be utilized only for inter provincial transport and has nominated the 1<sup>st</sup> respondent to manage the said bus terminal, the mere physical location of the bus stand within the Western Province does not bring it within the purview of the Western Provincial Council.

In **P13** the Cabinet has authorized the management of the inter provincial passenger terminal at Bastian Mawatha by the National Transport Commission which is sufficiently empowered to carry out the functions in question by virtue of *sec.9 of the National Transport Commission Act No. 37 of 1991 as amended by Sri Lanka Transport Board Act No. 27/2005.*



The petitioner did not establish a valid and acceptable legal basis to quash **P13** and the subsequent documents marked as **P6, P7, P9, P10** and **P11** therefor the application of the petitioner is dismissed with costs fixed at Rs. 25,000/=.

**JUDGE OF THE COURT OF APPEAL**