

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

**CA (Writ) Application No: 200/2018**

1. D.S. Gunasekera Passenger Transport Services (Private) Limited,  
No. 388/37,  
Harishchandra Mawatha,  
Anuradhapura.
2. Hewa Willaddarage Charitha  
Piyumal De Silva,  
No. 59/2, Police Park Lane,  
Mirihana, Nugegoda.
3. Aruna Priyantha Edirisinghe,  
No. 179/35, Gorakagaha Road,  
Borella, Colombo 8.

**PETITIONERS**

**Vs.**

1. The National Transport Commission.
2. M.A.P. Hemachandra,  
Chairman,  
The National Transport Commission.
- 2A. Janaka Mallimarachchi,  
Chairman,  
The National Transport Commission.

No. 241, Park Road, Colombo 5.

3. G.S. Withanage,  
Secretary,  
Ministry of Transport and Civil Aviation.

3A. L.P. Jayampathy,  
Secretary,  
Ministry of Transport and Civil Aviation.

4. Hon. Nimal Siripala De Silva,  
Minister of Transport and Civil Aviation.

4A. Hon. Arjuna Ranatunga,  
Minister of Transport and Civil Aviation.

3<sup>rd</sup>, 3A, 4<sup>th</sup> and 4A Respondents at  
7<sup>th</sup> Floor, Sethsiripaya Stage II,  
Battaramulla.

### **RESPONDENTS**

**Before:** Arjuna Obeyesekere, J

**Counsel:** Navin Marapana, P.C., with Keerthi Sri Gunewardena and  
Uchitha Wickremesinghe for the Petitioners

Ms. Anusha Fernando, Deputy Solicitor General for the  
Respondents

**Supported on:** 24<sup>th</sup> June 2019

**Written** Tendered on behalf of the Petitioners on 26<sup>th</sup> September 2019

**Submissions:**

Tendered on behalf of the Respondents on 31<sup>st</sup> July 2019

**Decided on:** 31<sup>st</sup> August 2020

**Arjuna Obeyesekere, J**

When this matter was mentioned on 15<sup>th</sup> July 2020, the learned President's Counsel for the Petitioner and the learned Deputy Solicitor General for the Respondents moved that this Court pronounce its Order on whether notice of this application should be formally issued on the Respondents, on the written submissions that have already been filed on their behalf.

The question that arises for determination in this application is whether the route permits issued to the Petitioners by the 1<sup>st</sup> Respondent, the National Transport Commission to ply super luxury buses on the Southern Expressway and/or the Outer Circular Expressway are *lifetime* permits.<sup>1</sup>

The facts which are relevant to this application are briefly as follows.

The Petitioners admit that plying of buses on normal roads or otherwise referred to as *traditional routes* had been carried out by obtaining route permits from the 1<sup>st</sup> Respondent. They claim that such permits were considered as *life time permits* and that they were *only required to be renewed annually after paying the relevant fees to the 1<sup>st</sup> Respondent*.

The Petitioners state that while the construction of the first expressway from Kottawa to Galle was underway, the Government had taken a decision in 2005 that permits to ply buses on the expressway would be issued to those who are selected by following tender procedure. The Petitioners state that accordingly, in 2011 five route permits had been issued on the basis of tender to operate super luxury buses from Kottawa to Galle. The 1<sup>st</sup> Petitioner states that it is a recipient of one such permit, but has not produced a copy of such permit.

The Petitioners state that in 2012, a further eight permits had been issued to operate super luxury buses on the expressway, but without calling tenders, to persons who had already been issued permits to operate buses on the traditional route (i.e. from Galle to Colombo on Galle Road), by converting the

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<sup>1</sup> The National Transport Commission has been established in terms of the National Transport Commission Act No. 37 of 1991, as amended.

permits such persons already held. With the extension of the expressway to Matara, the 1<sup>st</sup> Respondent had issued 13 permits on a temporary basis in 2014 to cater to the high demand during the Sinhala Tamil New Year.

Pursuant to a decision taken by the Cabinet of Ministers in April 2014, a Committee had been appointed to study the issuance of permits to operate super luxury buses on the expressway. The recommendations of the said Committee had thereafter been placed before the Cabinet of Ministers, who had approved the implementation of the recommendations of the Committee, including the following:<sup>2</sup>

- “3. අධිවේගී මාර්ගයට අනුයුක්ත කිරීම සඳහා මගීසේවා අවසර පත්‍ර තෝරාගත යුත්තේ අධි සැපයුමක් ඇති සමගාමී සාමාන්‍ය මාර්ගයේ මගීසේවා අවසරපත්‍ර නිමකරුවන්ගෙන් පමණක් විය යුතුය.
7. අධිවේගී මාර්ගයට අනුයුක්ත වීමේදී දැනට සමගාමී සාමාන්‍ය මාර්ගයේ පවත්නා මගී සේවා අවසරපත්‍රය අනෙකි කළ යුතුය.
11. ඉහත 3 හා 4 කරුණු යටතේ හඳුනාගත් මාර්ගවලින් අධිවේගී මාර්ගයට ධාවකයින් තෝරාගැනීම සඳහා ඉහත කොන්දේසි සහ පහත දැක්වෙන ක්‍රමවේදය අනුගමනය කළ යුතුය.”

The Petitioners state that 43 permits were issued after the above decision, and that the said permits are silent with regard to its duration. Although the Petitioners state that they considered the said permits to be *life time permits*, no proof has been adduced to substantiate the said claim. The Petitioners have however referred to an affidavit filed by the 2<sup>nd</sup> Respondent, the Chairman of the National Transport Commission in SC (FR) Application No. 306/2016, where the 2<sup>nd</sup> Respondent, referring to the said 43 permits, had stated that ‘*the duration of the permit has not been specified but **appears** to have been considered as life time permit*’. The Petitioners therefore state that the said 43 permits *were for all intents and purposes accepted and regarded by the 1<sup>st</sup> Respondent Commission and its officials as being Route Permits issued on a life time basis to the Petitioners*’, which position has however been disputed by the learned Deputy Solicitor General.

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<sup>2</sup> Vide decision of the Cabinet of Ministers taken on 30<sup>th</sup> July 2014, marked ‘X9’.

The basis for this application are the following letters dated 8<sup>th</sup> November 2017 received by each of the Petitioners, marked 'X18', 'X19' and 'X20' respectively:

**“අධිවේගී මාර්ගයේ ධාවනය වන බලපත්‍ර වල කාලය දීර්ඝ කිරීම – අවසර පත්‍ර අංකය 13694<sup>3</sup>**

පාහික ගමනාගමන කොමිෂන් සභා පනතේ 24 වන වගන්තිය යටතේ ඔබ වෙත නිකුත් කොට ඇති දක්ෂිණ අධිවේගී මාර්ගයේ මහරගම සිට මාතර දක්වා වූ මගී සේවා අවසර පත්‍රයෙහි වලංගු කාල සීමාව පනතේ 25 (2) (අ) වගන්තිය ප්‍රකාරව සම්පූර්ණ වීමට නියමතව ඇත.

එසේ කාල සීමාව සම්පූර්ණ වීමට නියමිත ඔබගේ මගී සේවා අවසර පත්‍රයෙහි කාල සීමාව පනතේ 30 වන වගන්ති ප්‍රකාරව දැනට වලංගුව පවතින මගී සේවා අවසර පත්‍රයේ කාල සීමාව අවසන් වන දින සිට තවත් අවුරුදු 3ක කාල සීමාවක් සඳහා දීර්ඝ කිරීමට පාහික ගමනාගමන කොමිෂන් සභාවේ අධ්‍යක්ෂ මණ්ඩලයෙහි අනුමැතිය ලැබී ඇති බව දන්වා සිටීම. මෙලෙස අවුරුදු 3ක කාල සීමාවක් සඳහා ඔබගේ මගී සේවා අවසර පත්‍රය දීර්ඝ කිරීම වාර්ෂික අළුත් කිරීමේ පදනම මත සිදු කරනු ලැබේ.

එසේම ඔබගේ වාර්ෂික මගී සේවා අවසර පත්‍ර ගාස්තුව තීරණය කරනුයේ එම මගී සේවා අවසර පත්‍රය අළුත් කරනු ලබන දිනට වලංගුව පවතින තාක්ෂණික අගය මතය. තවද එම වාර්ෂික ගාස්තුව ඔබ විසින් එකවර පාහික ගමනාගමන කොමිෂන් සභාව වෙත ගෙවිය යුතුවේ.

එසේම බස්රථ ධාවනය කිරීම සඳහා පාහික ගමනාගමන කොමිෂන් සභාව විසින් ලබා දී ඇති නියමිත කාල සටහන සහ මගී සේවා අවසර පත්‍රයෙහි අඩංගු කොන්දේසි උල්ලංඝනය කරනු ලබන බස්රථ වල මගී සේවා අවසර පත්‍ර අවලංගු කිරීමට ද පාහික ගමනාගමන කොමිෂන් සභාව විසින් කටයුතු කරන බවද වැඩි දුරටත් ඔබ වෙත දන්වා සිටීම.”

'X18', 'X19' and 'X20' have been issued to the holders of the said permits informing them that the validity of their permits are due to expire, and that approval of the National Transport Commission had been granted to extend the validity period for a period of 3 years, in terms of Section 30 of the Act, subject to payment of the annual renewal fee.

Aggrieved by the decision to renew the permits issued to them, the Petitioners invoked the jurisdiction of this Court, seeking the following relief:

<sup>3</sup> Permit No. 13694 has been issued to the 1<sup>st</sup> Petitioner.

- (a) A Writ of Certiorari to quash the decision of the 1<sup>st</sup> Respondent contained in letters marked 'X18', 'X19' and 'X20';
- (b) A Writ of Mandamus compelling the Respondents to treat the Petitioners as *life time* Route Permit holders, and hence possessing permits which does not require renewal.

There is no dispute between the parties that in terms of the Act, a permit is required to operate a bus service for the carriage of passengers, and that the 1<sup>st</sup> Respondent is empowered in terms of the Act to issue such permits. This position is confirmed by Sections 18(1) and 21 of the National Transport Commission Act, No. 37 of 1991, as amended (the Act), which reads as follows:

Section 18(1):<sup>4</sup>

*“No person shall use an omnibus for carriage of passengers for a fee or reward or separate fare except under the authority of a passenger service permit for the time being in force issued by the Commission or by a person authorized in that behalf.”*

Section 21:

*“From and after the appointed date no person shall use an omnibus for the carriage of passengers at separate fares within the specified area except under the authority of a passenger service permit granted by the Commission and for the time being in force.”*

The power to grant permits is contained in Section 24 of the Act, which reads as follows:

*“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*

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<sup>4</sup> Section 18(1) has been repealed and replaced by the Sri Lanka Transport Board Act No. 27 of 2005.

*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.”*

While in terms of Section 25(1), *“No passenger service permit shall be granted by the Commission to any person under section 24 except upon the payment by such person to the Commission of such fee as may be prescribed”*, Section 22 goes on to provide that, *“A passenger service permit granted under section 24 shall entitle the holder thereof to use an omnibus of which he is the registered owner for the carriage of passengers on such route or routes as are specified in such permit, in accordance with the conditions attached thereto.”*

In terms of Section 25(2)(b) of the Act, *“Every passenger service permit granted under section 24 shall, unless it is cancelled earlier, be in force for such period not less than one year and not more than three years, as may be specified in such permit.”*

The Act contains detailed provisions with regard to the renewal of a permit issued in terms of Section 24. The starting point is Section 30 of the Act which reads as follows:

*“(1) The Commission may subject to subsection (2) and having regard to the availability of adequate omnibus services to meet the demand for omnibus services on the route or routes covered by any passenger service permit granted under section 24 renew such permit, on application made to it by the holder of such permit for such period not less than one year and not more than three years calculated from the date of expiry of the permit.*

*(2) The Commission may refuse to renew any passenger service permit granted under Section 24 if it appears to the Commission that the holder of such permit:*

*(a) has not observed the provisions of this Act or any regulations made thereunder;*

(b) *has been convicted of any offence under this Act or any regulations made thereunder;*

(c) *has not paid the prescribed fee for the renewal of the permit."*

In terms of Section 32, "*Where the Commission decides to refuse the grant or renewal of a passenger service permit, or cancel a passenger service permit, it shall **communicate in writing to the applicant or the holder of the permit, as the case may be, its decision together with the reasons therefor.***"

Section 33 of the Act provides a person whose application for renewal has been denied by the 1<sup>st</sup> Respondent a right of appeal to the Secretary of the Ministry under which the 1<sup>st</sup> Respondent functions.<sup>5</sup>

Thus, the issuance and renewal of a permit is conditional upon the provisions of Section 24 and 30 of the Act being satisfied. At the point of issuance of a permit in terms of Section 24, the validity period of a permit should not be less than one year, and not more than three years. Similarly, a permit which is renewed in terms of Section 30 shall carry a validity period of not less than one year, and not more than three years.

There are two matters that need to be considered in answering the question that has arisen for the determination of this Court. The first is whether the 1<sup>st</sup> Respondent has the power to issue *life time* route permits. The second is whether the statement of the 2<sup>nd</sup> Respondent can give rise to a legitimate expectation that the permits that have been issued to them are *life time* permits.

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<sup>5</sup> Section 33 (1)(a) and (2) reads as follows:

(1) The applicant for, or the holder of a passenger service permit who is aggrieved by a decision of the Commission refusing the grant of a passenger service permit under section 24 or the renewal thereof under section 30 may appeal against the decision to the Secretary to the Ministry of the Minister within fourteen days of the date on which such decision is communicated to him.

(2) The Secretary may on any appeal under subsection (1):

(a) allow the appeal and direct the Commission to grant or renew the passenger service permit with respect to which the appeal is made;

(b) disallow the appeal:

(c) direct the Commission to amend the permit or to grant the permit in accordance with his decision on such appeal.



The two sections which are relevant to a determination of the first matter are Section 25(2)(b) and Section 30 of the Act. In terms of Section 25(2)(b), every permit that is issued in terms of Section 24 must have a time period specified therein. While the minimum period of a permit is one year, the maximum period that a permit can be issued for is three years. Section 30 of the Act provides for the renewal of a license issued under Section 24 for a period which shall also not be less than one year and not more than three years calculated from the date of expiry of the permit. Thus, there can be no doubt that the validity of a permit is constrained by time, and that the 1<sup>st</sup> Respondent cannot issue a route permit without specifying the time period for which it is being issued. Hence, this Court is of the view that the 1<sup>st</sup> Respondent does not have the power in terms of the Act to issue *life time* permits and therefore is of the view that permits issued by the 1<sup>st</sup> Respondent cannot be considered as *life time* permits.

The Petitioners had taken up the position in its petition that Sections 25 and 30 of the Act relating to time periods do not apply to the route permits issued to them, and for that reason the decision in 'X18', 'X19' and 'X20' that the time period of the permits issued to them has been extended is *ultra vires* the powers of the 1<sup>st</sup> Respondent.<sup>6</sup> However, in their written submissions, the Petitioners have stated as follows:

*“The presumption that the route permit is a life time permit simply means that whatever the nominal duration of the route permit i.e. annual permit or a three year permit, will be automatically renewed as long as there is no violation of the law and/or regulations.”<sup>7</sup>*

This Court is of the view that there is nothing called *automatic renewal*. The fact that the Petitioners themselves concede that renewal is subject to there not being a violation of the law and/or regulations means that the renewal is not automatic. Furthermore, in terms of Section 30(1), when considering a renewal, the 1<sup>st</sup> Respondent shall have *“regard to the availability of adequate omnibus services to meet the demand for omnibus services on the route or*

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<sup>6</sup> Vide paragraph 27 of the petition.

<sup>7</sup> Vide paragraphs 31, 45 and 59 of the written submissions.

*routes covered by any passenger service permit*”, which too means that renewal is not automatic. Hence, this Court rejects the submission that renewal of a permit issued by the 1<sup>st</sup> Respondent is automatic.

The second matter that needs to be considered is whether the aforementioned statement by the 2<sup>nd</sup> Respondent can give rise to a legitimate expectation that the permits that have been issued to them are *life time* permits. There is no doubt that the 2<sup>nd</sup> Respondent cannot make any representation which is outside the four corners of the law that regulates his decision making power, and that such a representation is illegal. An illegitimate representation cannot give rise to a legitimate expectation.

As stated by this Court in **Ranasinghe Bandara vs The Director, District Land Reform Commission**,<sup>8</sup> *“the principle that the Court will not give effect to a legitimate expectation where to do so would involve the decision maker acting contrary to law is fundamental.”*

In the case of **Ginigathgala Mohandiramlage Nimalsiri v. Colonel P.P.J. Fernando and others**,<sup>9</sup> the Supreme Court held that:

*“An expectation the fulfillment of which results in the decision maker making an unlawful decision cannot be treated as a legitimate expectation. Therefore, the expectation must be within the powers of the decision-maker for it to be treated as a legitimate expectation case. If a person did not expect anything, then there is nothing that the doctrine can protect.”*

Hence, this Court takes the view that the Petitioners cannot rely on the said statement of the 2<sup>nd</sup> Respondent to support their argument that the permits issued to them are *life time* permits.

Having taken up the position in their petition that the provisions of Sections 25 and 30 of the Act did not apply to such route permits,<sup>10</sup> the Petitioners have gone onto state that the provisions relevant to the granting of the said

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<sup>8</sup> CA (Writ) Application No. 233/2017; CA Minutes of 17<sup>th</sup> June 2019.

<sup>9</sup> SCFR 256/2010; SC Minutes of 17<sup>th</sup> September 2015.

<sup>10</sup> Vide paragraph 27 of the petition.

route permits was Section 8(k) of the Act.<sup>11</sup> However, in their written submissions the Petitioners have stated that Sections 25 and 30 ought to be read with Section 8(k) of the Act, and that *'it would be the conditions in the relevant agreements that would govern the validity of such route periods'*.<sup>12</sup> The Petitioners have not produced any agreement that it has entered into with the 1<sup>st</sup> Respondent relating to the use of the buses on the expressway.

Section 8(k) of the Act is a 'function' of the 1<sup>st</sup> Respondent and not a specific 'power'. With a view to giving effect to such 'functions', the 1<sup>st</sup> Respondent has been conferred with statutory power by Sections 24, 25 and 30 of the Act to issue passenger service permits. In all instances where the 1<sup>st</sup> Respondent issues permits, Sections 24, 25 and 30 shall be applicable to such permits. The provisions of the Act relating to imposition of time periods cannot therefore be replaced by agreement of the parties. In any event, Section 18 of the Act makes it clear that the use of an omnibus for carriage of passengers for a fee or reward or separate fare can only be done under the authority of a passenger service permit issued by the 1<sup>st</sup> Respondent, upon an application in that behalf made in terms of Section 24 of the Act. Hence, this Court does not see any merit in this submission.

In the above circumstances, this Court is of the view that the Petitioners have failed to establish a prima-facie case and a legal basis for this Court to issue formal Notice of this Application on the Respondents. This application is accordingly dismissed, without costs.

**Judge of the Court of Appeal**

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<sup>11</sup> Section 8 deals with the functions of the 1<sup>st</sup> Respondent and paragraph (k), specifies that the 1<sup>st</sup> Respondent may enter *"into agreements with any person for the provision of inter-provincial omnibus services and to issue passenger carriage permits in respect thereof"*.

<sup>12</sup> Vide paragraph 61 of the written submissions.