

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

Nagananda Kodituwakku  
General Secretary  
Vinivida Foundation  
99, Subadrarama Road,  
Nugegoda.

**Petitioner**

**Case No. CA/Writs/609/2021**

**Vs.**

1. D.M.S. Dissanayake,  
Chairman, Consumer Affairs  
Authority (CAA),  
1<sup>st</sup> Floor, CWE Secretariat,  
27, Vauxhall Street,  
Colombo 02.
2. Mrs. Siddika Senarathna,  
The Director General,  
Sri Lanka Standards Institute,  
17, Victoria Place,  
Colombo 08.
3. Thushan Gunawardena,  
The Former Executive Director of  
Consumer Affairs Authority CAA,  
154/8, Purwarama Road,  
Colombo 05.

4. Laugfs Holdings Ltd,  
101, Maya Avenue,  
Colombo 06.  
  
4A. Laugfs Gas PLC,  
101, Maya Avenue,  
Colombo 06.
5. Litro Gas Lanka Ltd,  
267, Union Place,  
Colombo 02.
6. Bandula Gunawardana,  
Minister of Trade,  
492, De Mel Mawatha,  
Colombo 05.
7. Lasantha Alagiyawanna,  
State Minister of Consumer  
Protection,  
Ministry of Consumer  
Protection,  
27, Vauxhall Street  
Colombo 02.
8. P.P.D.S. Muthukumarana,  
Government's Chief Valuer,  
Valuation House,  
748, Maradana Road,  
Colombo 10.
9. C.D. Wickramaratna,  
Inspector General of Police,  
Police Head Quarters,  
Colombo 01.
10. Attorney- General,  
Attorney General's Department,  
Hulfsdorp Street,  
Colombo 12.

## Respondents

**Before** : Dr. Ruwan Fernando, J. &  
M. Sampath K.B. Wijeratne, J.

Petitioner is present in person.

**Counsel** : F. Jameel, SASG, P.C. with Manohara Jayasinghe  
SSC, M. Sri Meththa for 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 10<sup>th</sup>  
Respondents.

Suren De Silva with Rashini Dias and J.  
Samarasinghe for the 4A Respondent.

Harsha Amarasekara PC with Ruwantha Cooray  
and A. Thureraja for the 5<sup>th</sup> Respondent.

**Supported on** : 08.02.2022

**Decided on** : 09.03.2022

### Dr. Ruwan Fernando, J

[1] When this Petition was supported on 08.02.2022 for notice, the 4A and the 5<sup>th</sup> Respondents who had filed limited statements of objections to the Petition filed by the Petitioner submitted to Court that this Petition must be dismissed *in limine* without issuing notice on the 4A and the 5<sup>th</sup> Respondents. We heard the parties on the question of whether or not we should issue notice on the Respondents. Accordingly, this order is limited to the sole question of whether or not this Court should issue notice on the Respondents and dismiss the Petition *in limine* on the basis of the preliminary objections raised on behalf of the 4A and the 5<sup>th</sup> Respondents.

[2] At the inquiry before this Court on 08.02.2022, the learned Counsel for the 4A Respondent submitted that the notice should not have been issued against the said 4A Respondent for the following reasons:

1. The Petitioner is not entitled in law to maintain this application as a public interest litigant and that the Petitioner has sought to abuse the

process of the Court and mislead the Court with an ulterior and dishonest motive;

2. There is not an iota of evidence against the 4A Respondent to the effect that the 4A Respondent had changed the composition ratio of Butane and Propane in the 12.5 Kg gas cylinders and therefore, the Petitioner has failed to disclose a prima facie case against the 4A Respondent.

[3] The learned President's Counsel for the 5<sup>th</sup> Respondent submitted that the notice should not have been issued against the 5<sup>th</sup> Respondent for the following reasons:

1. The Petitioner is not a bona fide public interest litigant, instead, is motivated by other extraneous considerations;
2. The writs of mandamus sought by the Petitioner cannot be granted by this Court in the circumstances of the case as there is no cause of action depicted in the Petition;
3. The Petitioner has failed to demonstrate an act and/or omission on the part of the State which warrants the intervention of this Court;
4. Upon complying with the order made by this Court on 17.12.2021, this action instituted by the Petitioner is redundant and futile in nature;
5. There is a misdescription and non-joinder of the Respondents; and
6. There is a willful suppression and/or misrepresentation of facts.

[4] At the outset of the inquiry, the 4A and the 5<sup>th</sup> Respondents invited this court to refuse notice against them on the basis that the Petitioner is not a public interest litigant, but a publicity interest litigant and therefore, the Petitioner has no *locus standi* to maintain this Petition in the public interest

[5] According to the Petition, the Petitioner is an Attorney-at-Law and a public interest litigation activist and also the General Secretary of Sri Lanka Vinivida Foundation. The Petitioner filed this Petition stating, *inter alia*, that the consumers who use the LP gas cylinders suffered physical injury and damage to their private properties due to the gas-related explosions

caused by the change of the Propane and Butane composition intentionally by the 4A and 5<sup>th</sup> Respondents, and due to gross negligence on the part of the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents in violation of trust and confidence placed in their public office. The Petitioner further claimed that the 9<sup>th</sup> Respondent who is duty bound to initiate an investigation into the complaint of gas explosions made by him, and the affected consumers, failed to initiate any credible investigation into the said gas explosions in violation of the public duty and public trust placed in him.

[6] In my view, when a Petition is filed as public interest litigation against the State or any public officer or public body, the Court must satisfy itself that the party which has brought the litigation is litigating bona fide for the public good as the 'public interest litigation' will not be merely a clock for attaining private ends of a party bringing the Petition. Accordingly, the public interest litigation may be appropriate where the judicial intervention is necessary for the protection of the sanctity of democratic institutions and prevention of actions and omissions of a public administrative body that jeopardizes the rights of citizens who belong to the disadvantaged sections of society, and who are unable to seek redress from an administrative body that fails to perform its legal duty.

[7] The common rule of locus standi is relaxed so as to enable the Court to look into the grievances complained of on behalf of the poor, deprived, illiterate and the disabled either socially or financially, who cannot vindicate the legal injury caused to them for any violation of a legal right by those who fail to perform their public duty. In such cases, the court is constitutionally bound to protect the rights of disadvantaged citizens so as to direct the State to fulfil its constitutional and statutory duties however, within the parameters of law and rules of Court. In this process, the Court should allow such a bona fide interested person in the welfare of the people who is in a disadvantaged position and thus, not in a position to knock the doors of the Court provided however, that the Petition falls within the scope of the legal parameters.

[8] In our order dated 17.12.2021, we specifically held that "unless we make the following orders in the public interest, it will lead to devastating consequences to consumers leaving no way of undoing the loss of life, injury and damage to property of consumers who use gas cylinders for their

daily domestic needs” and accordingly, granted two orders on the basis of the material placed by the parties before us at that stage. The Petitioner is now inviting this Court to exercise its writ jurisdiction in terms of Article 140 of the Constitution and grant the substantive reliefs prayed for in the Petition.

[9] We heard the submissions of the parties in detail at the inquiry, and perused the Petition and the documents annexed thereto by the Petitioner and the Respondents. I am unable to agree with the learned Counsel for the 4A Respondent and the learned President’s Counsel for the 5<sup>th</sup> Respondent that the Petition filed by the Petitioner has no foundation of public interest litigation. On the available material, I am not inclined to the view that this Petition is a publicity interested litigation as contended on behalf of the 4A and the 5<sup>th</sup> Respondents and on facts, I hold that the Petition filed by the Petitioner is a bona fide “public interest litigation” for the public good of the citizens of Sri Lanka.

[10] I shall now turn to the question of non-joinder or misjoinder of the parties. When this case was supported on 14.12.2021, the learned Counsel for the 4A Respondent raised a preliminary objection that the Respondent named as the Laugfs Holding Ltd was a wrong party and accordingly, this action is liable to be dismissed *in limine*. The Petitioner however, sought permission of Court to amend the caption by adding the correct party, Laugfs Gas PLC as a Respondent. The learned Counsel for the 4<sup>th</sup> Respondent or the 5<sup>th</sup> Respondent did not object to the said application at the stage of the inquiry held into the application made by the Petitioner seeking interim relief. We allowed the application of the Petitioner to amend the caption by adding Laugfs Gas PLC as the 4A Respondent and directed the Petitioner to amend the caption accordingly. Hence, there is no merit in the preliminary objection that the Petition should be dismissed *in limine* on the basis that the Petitioner had originally filed this Petition against a wrong party.

[11] I will now turn to the question raised on behalf of the 4A and the 5<sup>th</sup> Respondents that the Petitioner has not presented a *prima facie* case against them and in the circumstances, the writs of mandamus sought by the Petitioner cannot be granted by this Court. The Petitioner is however, inviting this court to exercise its writ jurisdiction afforded by Article 140 of

the Constitution compelling the Hon. Attorney-General (10<sup>th</sup> Respondent) to institute proceedings against the 4A and the 5<sup>th</sup> Respondents under section 298 of the Penal Code, under section 45 of the Sri Lanka Standards Institute Act, No. 6 of 1984 and under section 13 of the Consumer Affairs Authority Act, No. 9 of 2003 or under any other provisions of law for committing criminal offences by intentionally increasing the Propane composition of the 12.5 Kg gas cylinder without any scientific basis or approval of the 1<sup>st</sup> Respondent or the 2<sup>nd</sup> Respondent resulting in serious injuries, including death and damage to the property of citizens of this Country.

[12] I will now turn to the submissions made by the Petitioner in support of the Petition and his application that this Court should issue notice against the Respondents. It is the Petitioner's case that the 4A and 5<sup>th</sup> Respondents being the primary suppliers of domestic gas cylinders in Sri Lanka supplied 12.5 Kg domestic gas cylinders with the composition of 80% Butane and 20% Propane, and in Sri Lanka, domestic gas cookers were only meant to withstand the pressure generated by the composition of Butane 80% and Propane 20% in the gas cylinders. The Petitioner claims that the explosions were caused by the irregular trade practices adopted by the 4A and the 5<sup>th</sup> Respondents who intentionally changed the composition of ratio of Butane and Propane to 50% Propane and 50% Butane, which resulted in the gas related explosions in Sri Lanka causing death, physical injury and damage to the private properties of consumers.

[13] At the inquiry, the Petitioner strongly relied on the document marked X1 sent by the former Chairman of the 5<sup>th</sup> Respondent to the Director-General of the State Ministry of Cooperative Services and Consumer Affairs with a copy to the 1<sup>st</sup> Respondent, and the document marked X2 which had been issued by the Director, HSE & Quality Assurance of the 5<sup>th</sup> Respondent with regard to the claimed comparative advantages of the gas composition of 12.5 Kg gas cylinder with the new Premium Hybrid 18 L gas cylinder introduced by the 5<sup>th</sup> Respondent to the market. Prima facie, the 5<sup>th</sup> Respondent's own document (X2) reveals that on **28.04.2021**, the gas composition of 12.5 kg domestic gas cylinders was Butane 80% and Propane 20% and the gas composition of the new Premium Hybrid 18L gas cylinder was Butane 50-60% and Propane 40-50%.

[14] The Petitioner further relied on the investigations carried out by the former Executive Director of Consumer Affairs Authority (the 3<sup>rd</sup>

Respondent) and the tests carried out by Intertek Laboratory on **17.04.2021** at the request of the 1<sup>st</sup> Respondent (X3 & X4) from two 12.5 Kg gas cylinders drawn from the market. Prima facie, the Test Report reveals that in both samples, Propane composition had been increased from 20% to 48.57% (Mol) and 48.14% (Mol) respectively, whereas the Butane composition had dropped from 80% to 18.17% (Mol) and 30.88% (Mol).

[15] The Director-General of Consumer Affairs Authority has confirmed in his letter dated 04.12.2021 (R13) that (i) 60% of gas cylinders in the market contained the changed ratio of gas composition without the required level of Ethyl Mercaptan in the gas cylinders; and (ii) the tests carried out at the CPC Laboratory from the samples taken from the Ship "Gas Challenger" on 03.12. 2021 revealed that the gas composition was Butane 50%- Propane 50%, while the composition of the new shipment was proved to be Butane 70%- Propane 30%.

[16] The Interim Report issued by the Panel appointed by His Excellency the President dated 06.12.2021 reveals that there had been 458 gas-cylinder related incidents reported to the Committee from 01.01.2021 to 05.12.2021. Out of 458 incidents, 244 incidents relate to complaints of gas leaks and other related damage to the gas cylinder-1, damages to the gas pipe- 23, damage to the regulator-09, gas cooker and the glass top of the cooker-178, damage to other property due to high temperature- 03 and gas leaks-244.

[17] It was the contention of the learned Counsel for the 4A Respondent that there is no iota of evidence presented by the Petitioner to establish that the 4A Respondent was involved in changing the gas composition in the gas cylinders supplied to the domestic market and that the standard Butane 60-80 and Propane 20-40 composition was regularly maintained by the 4A Respondent.

[18] The Petitioner invited our attention to the annexed document marked 4AR1 which reveals that except the Certificate of Quality dated 03.12.2021, all other Certificates of Quality and Reports relate to a period before the period in question (November 2021). According to the document filed by the 5<sup>th</sup> Respondent (5R4), during the period in question (November 2021), about 797 Litro gas related incidents had been reported and about 50 gas related incidents involving Laugfs gas related cylinders had been reported. Out of such reported cases, during the relevant period, there had been 2



deaths, 16 injuries and 10 property damages. The Chairman of the 5<sup>th</sup> Respondent in his interview with News 1<sup>st</sup> (X16-X17) admits that (i) the propane composition in the gas cylinder had been changed and that the same composition applied to both 12.5 Kg and 18 Kg gas cylinders as well; and (ii) when he took over the Company on 26.07.2021, he realised that there was a public outcry over Litro introducing 18 Kg cylinder with no benefits of price reduction to the consumers due to the reduced quantity of gas.

[19] The Petitioner further relied on the statements made by the Chairman of the Expert Panel appointed by His Excellency the President, Professor Shantha Walpolage and Professor W. D. W. Jayathilake at a Media Conference aired on Hiru TV. The Chairman of the Expert Committee, Professor Walpola admits that the Committee had not found any defect or abnormality in the cylinder except the composition of gas which showed an increase of Propane percentage upto 40. He says that the primary reasons for the gas-related explosion was the increase of Propane percentage in the gas cylinders (recording at X16 & 17).

[20] The Member of the Expert Committee, Professor Jayatillaka states that the laboratory tests conducted at Sapugaskanda have revealed that the propane composition which had been increased up to 42%-46%, and out of Butane and Propane, Propane is more evaporative and this increase has caused the pressure inside the cylinders to rise causing explosions (recording at X16 & 17).

[21] What the 5<sup>th</sup> Respondent submits however, is that the 5<sup>th</sup> Respondent has complied with all the orders made by this Court on 17.12.2021 and that the reliefs sought in paragraph (e) of the prayer of the Petition has already been complied with by the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents and therefore, the action instituted by the Petitioner is redundant and futile. It is to be noted that the reliefs sought by the Petitioner are not limited to interim reliefs granted by this Court as prayed for in paragraphs (b) and (c) or the orders sought by the Petitioner in paragraph (e). The Petitioner has sought substantive reliefs prayed for in paragraph (f) and (g) of the Petition as well and therefore, the contention that the Petition is redundant and futile when

the two orders granted by this Court are complied with by the 4A and 5<sup>th</sup> Respondent is untenable.

[22] What the learned Senior State Counsel on behalf of the Attorney-General (10<sup>th</sup> Respondent) maintains in the present case is that the institution of criminal proceedings is the Attorney-General's discretionary power in terms of the provisions of the Criminal Procedure Code based on facts submitted to the Attorney-General subsequent to an investigation that had been carried out by the IGP. His submission was that the courts cannot interfere with that statutory right of the Attorney-General by issuing a writ of mandamus against the Attorney-General.

[23] It is not in dispute that the Attorney-General has statutory powers to exhibit information, present indictment and to institute, undertake or carry-on criminal proceedings in cases referred to in section 393 (1) of the Criminal Procedure Code. On the other hand, the Attorney-General also has powers to give advice, whether on application or on his own initiative to state departments, public officers, officers of the police and officers in corporations in any criminal matter of importance or difficulty (393(2). Further, the Attorney-General has powers to summon any officer of the State or of a corporation or of the police to his office, with any books or documents and interview them for the purpose of (a) initiating or prosecuting any criminal proceedings or (b) giving advice in any criminal matter of importance [393 (3)].

[24] The question involved in the application is no doubt of great general or public importance within the meaning of section 393 (2) and (3) of the Criminal Procedure Code, and being a guardian and the protector of the public interest in the rule of law, the Attorney-General has a public duty to take legal proceedings where the interests of the public are endangered or acts tending to public injury are done by any public authority.

[25] No doubt, it is the discretionary power of the Attorney-General to institute criminal proceedings, under the provisions of the Criminal Procedure Code. But it does not appear that he has ever exercised that power in this case as no investigation proper has been initiated by the IGP (9<sup>th</sup> Respondent). Prima facie, the Petitioner has shown that as the protector of the public interest, the Attorney-General has a public duty to

intervene and at least take steps to initiate an investigation to ascertain facts where the 9<sup>th</sup> Respondent has failed to investigate the gas-related explosions disregarding a public complaint made by the Petitioner to the IGP (X9) and other affected citizens.

[26] In my view, the question of exercising the discretion does not arise at this stage until such time an investigation is formally conducted by the IGP either on its own or at the direction made by the Attorney-General under the provisions of the Criminal Procedure Code. *Prima facie*, for the purpose of notice, the Petitioner has shown that the primary reason for the gas-related explosions was due to the increase in the propane percentage from 20% to 42-46% by the 4A and the 5<sup>th</sup> Respondents without any scientific basis and approval obtained from the regulator resulting in physical injury and damage to the private properties of consumers. The Petitioner has shown that prima facie, the material placed by the Petitioner warrants the intervention and the performance of the public duty by the Attorney General directing an investigation to be initiated by the 9<sup>th</sup> Respondent.

[27] In my view, the submissions made by the learned Senior State Counsel need to be considered by this Court only after giving an opportunity to the Respondents to file their formal objections and for the Petitioner to file any counter objections, if any and therefore, upon filing those objections and counter objections, if any, the Court would be in a better position to consider whether or not the Petitioner is entitled to the reliefs sought in the Petition in the present form or in any amended form.

[28] As noted, the documents marked X1-X4 and X6 clearly reveal that the 1<sup>st</sup> Respondent as the regulator was fully aware on 28.04.2021 that the gas composition of the 12.5 Kg gas cylinders had been drastically changed without the regulatory approval of the 1<sup>st</sup> Respondent. It is not in dispute that the 1<sup>st</sup> Respondent being the regular, has all the powers under the Consumer Affairs' Authority Act, *inter alia*, to control or eliminate (a) restrictive trade agreements among competitors; (b) investigate or inquire into anti-competitive practices and abuse of a dominant position; (c) promote and protect the rights and interests of consumers, purchasers and other users of goods and services in respect of the price, availability and

quality of such goods and services and the variety supplied; (d) determine the standards and specifications prescribed by the Sri Lanka Standards Institute (2<sup>nd</sup> Respondent) and (e) inquire into complaints regarding the production, manufacture, supply, storage, transportation or sale of any goods; and (f) the supply of any services which does not conform to the standards and specifications determined by the 2<sup>nd</sup> Respondent.

[29] A perusal of the Petitioner's document (X6) reveals that the 3<sup>rd</sup> Respondent who was the Executive Director of the Consumer Affairs Authority by email dated 12.05.2021 had informed the 1<sup>st</sup> Respondent that as the Litro Gas company claiming Butane-Propane composition in the 12.5 kg cylinder is factually incorrect and that the gas does not conform to the standards claimed by the Company, the Authority shall act under section 13 (b) of the Consumer Affairs Authority Act.

[30] Prima facie, the Petitioner has shown that except to send an email to the 2<sup>nd</sup> Respondent on **11.06.2021** (1R1) to formulate the SLSI standard and formulate the regulation, no action had been taken by the 1<sup>st</sup> Respondent being the regulator in terms of the provisions of the Consumer Affairs Authority Act, until such time the gas-related explosions had taken place in November 2021. Prima facie, no explanation so far, has been offered by the 1<sup>st</sup> Respondent as to why the regulatory measures and preventive actions were not taken under the provisions of the Act by the 1<sup>st</sup> Respondent before the gas-related incident took place in November 2021.

[31] The 2<sup>nd</sup> Respondent had received a request on 11.06.2021 to formulate the SLSI standards relating to the Butane and Propane composition in relation to the LPG composition contained in the domestic gas cylinder types (1R1), but the 2<sup>nd</sup> Respondent has failed to formulate the standard. No explanation has so far offered by the 2<sup>nd</sup> Respondent for the delay in formulating the SLSI standard for the LPG in relation to the Butane and Propane composition contained in the domestic gas cylinders. The 2<sup>nd</sup> Respondent formulated the standard only after the institution of the action.

[32] The 3<sup>rd</sup> Respondent has been named as a Respondent by the Petitioner in the Petition. It appears however, that the Petitioner has not sought any relief against the 3<sup>rd</sup> Respondent. The 6<sup>th</sup> Respondent has been named as a Respondent as he is the Cabinet Minister of Trade and the 7<sup>th</sup> Respondent

has been made a Respondent on the basis that he is the State Minister of Consumer Protection. The 3<sup>rd</sup> Respondent who received notice issued by the Petitioner however, did not appear in Court. A perusal of the Petition reveals that the Petition does not contain any averment to the effect that the 6<sup>th</sup> and the 7<sup>th</sup> Respondents prevented the 1<sup>st</sup> Respondent from exercising his regulatory powers in terms of the provisions of the Consumer Affairs Authority Act against the 4A and the 5<sup>th</sup> Respondents in violation of their public duties. On the other hand, no affidavit has been filed by the 3<sup>rd</sup> Respondent in support of the averment contained in paragraph 8 of the Petition.

[33] The 8<sup>th</sup> Respondent has been named as a Respondent as he is the Government Chief Valuer. There is nothing to indicate that the 8<sup>th</sup> Respondent being the Government Chief Valuer has a public duty to perform and conduct an inquiry into the gas-related incidents. For those reasons, I am not inclined to issue notice on the 3<sup>rd</sup>, 6<sup>th</sup>, 7<sup>th</sup> and the 8<sup>th</sup> Respondents.

### **Conclusion**

[34] For those reasons, I make the following orders:

1. The Petitioner has shown a prima facie case that warrants the issuance of notice against the 1<sup>st</sup>, 2<sup>nd</sup>, 4A, 5<sup>th</sup>, 9<sup>th</sup> and the 10<sup>th</sup> Respondents.
2. Notice is issued on the 1<sup>st</sup>, 2<sup>nd</sup>, 4A, 5<sup>th</sup>, 9<sup>th</sup> and the 10<sup>th</sup> Respondents returnable on 06.06.2022;
3. Notice is refused on the 3<sup>rd</sup>, 6<sup>th</sup>, 7<sup>th</sup> and the 8<sup>th</sup> respondents.

**JUDGE OF THE COURT OF APPEAL**

**M Sampath K.B. Wijeratne, J**

I agree,

**JUDGE OF THE COURT OF APPEAL**