

**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 Prohibition and  
*Mandamus* under and in terms of Article 140  
of the Constitution.

The Petroleum Dealers' Association,  
No 230, Lanka Filling Station,  
Dandugama, Ja-ela.

**PETITIONER**

**Court of Appeal Case No:**  
**CA/WRIT/540/23**

**Vs.**

1. Kanchana Wijesekara,  
Minister of Power and Energy,  
No. 80, Sir Ernest de Silva Mawatha,  
Colombo 07.
  
- 1A. Hon. E.N.G. Kumara Jayakody,  
Minister of Energy  
No. 80, Sir Ernest de Silva Mawatha,  
Colombo 07.
  
2. M.P.D.U.K Pathirana,  
Secretary,  
Ministry of Power and Energy,  
No. 80, Sir Ernest de Silva Mawatha,  
Colombo 07.
  
- 2A. Dr. Sulakshana Jayawardane,  
Secretary,  
Ministry of Power and Energy,  
No. 80, Sir Ernest de Silva  
Mawatha,  
Colombo 07.

2B. Prof. K.T.M. Udayanga Hemapala,  
Secretary,  
Ministry of Energy,  
No. 80, Sir Ernest de Silva  
Mawatha,  
Colombo 07.

3. Cargills Ceylon PLC,  
No. 40, York Street,  
Colombo-01

**RESPONDENTS**

Lanka IOC PLC,  
Level 20, West Tower World Trade  
Center, Colombo 01

**ADDED-RESPONDENTS**

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

**Counsel:** Ronald Perera, P.C. with Chandimal Mendis and Ashiq Haseem  
instructed by Sanath Wijewardane for the Petitioner  
Manohara Jayasinghe, D.S.G. with Pulina Jayasuriya S.C. for the 1<sup>st</sup> and  
2<sup>nd</sup> Respondents  
Harsha Amarasekara, P.C. with Kanchana Pieris instructed by MJ  
Associates for the 3<sup>rd</sup> Respondent

**Supported on:** 02.10.2025

**Order delivered on:** 31.10.2025

## **Mayadunne Corea J**

The Petitioner has sought the following reliefs, *inter alia*, from this Court:

- “e) Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 3<sup>rd</sup> Respondent from establishing and/or operating a fuel shed, filling station or petroleum dealership at Cargills Food City Kotalawala, Cargills Food City premises Wattala or any other premises of the 3<sup>rd</sup> Respondent, in a manner that is contrary to law, regulations, established procedure, circulars and/or regulations.*
- f) Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondent/s or any or more of them from granting , issuing and/or permitting the establishment and/or operation and/or continuation of any filling station, fuel shed or petroleum dealership in a manner contrary to the provisions of the Ceylon Petroleum Corporation Act and/or Petroleum Products (Special Provisions) Act and the rules, procedures and regulations applicable to the said industry.*
- g) Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondent/s or any one or more of them from acting in derogation of and/or in any manner contrary to the Committee Report on Criteria for Setting Up of New Filling Stations in Sri Lanka – Ministry of Petroleum Resources Development dated 02.05.2016 (P8) in regard to granting, issuing and/or permitting the establishment and/or operation and/or continuation of any filling station, fuel shed or petroleum dealership.*
- h) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondent/s or any one or more of them to process any and all applications seeking permission to operate a fuel shed, filling station or petroleum dealership strictly in accordance with the provisions of the laws, regulations, established procedure and guidelines thereto.”*

## **Factual matrix**

The facts of the case briefly are as follows. The Petitioner alleges that the Petitioner is a company limited by guarantee and incorporated by the laws of Sri Lanka, and marked the certificate of incorporation as P1. It is further submitted that the affidavit annexed is by the Vice President of the Petitioner Association, who also happens to have a petrol distributing centre in Kaduwela. It is further alleged that the members of the Petitioner have petrol stations with due approvals and have invested a substantial amount of money to finance the setting up of their filling stations. It is the Petitioner’s contention

that the owners of the filling stations have to satisfy certain requirements to obtain permission to operate a filling station or a petroleum dealership, and submit that they believe the same requirements need to be fulfilled to obtain a dealership with Lanka IOC.

The Petitioner alleges that in 2016, the Ceylon Petroleum Corporation had commenced a project with the University of Moratuwa to conduct a study to establish the criteria in selecting locations for new filling stations. For this purpose, a committee had been appointed. It is the Petitioner's contention that the said committee had submitted a report marked as P8 where the proposed locations have been identified to establish new filling stations. It is in this back drop two filling stations had been opened at the Kaduwela and Wattala Cargills Food City premises. It is the argument of the Petitioner that the opening of the two filling stations is in violation of the recommendations in P8. The affirmant whose affidavit is filed in support of the Petition who is also the Vice President of the Petitioner contends that when his own filling station in Kaduwela is in operation, there is no necessity for the existence of another filling station in the area. The main concern of the learned President's Counsel for the Petitioner is that in light of the new filling station, especially in the Kaduwela area, where the Vice President of the Petitioner has his own filling station in existence, impedes the business of his filling station. The Petitioner has vehemently objected to the new filling station. However, it is alleged that there had been no response from the Respondents. Hence, this Writ Application.

### **The Petitioner's contention**

The Petitioner contends that the Ministry of Petroleum Development had called for a committee report on the criteria for the setting up of new filling stations in Sri Lanka. The said report is marked as P8. It is the Petitioner's contention that the annexure to the report identifies the areas where new filling stations should be located, and the said report marked P8 is still valid. Thereby, the Petitioner alleged that the filling station in Kaduwela is in violation of the criteria laid down in P8.

### **The Respondent's contention**

The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents vehemently objected to the application on the following grounds:

- The document P8 has no legal status.

- Necessary parties are not before the Court.
- Laches by the Petitioner.
- The 1<sup>st</sup> and 2<sup>nd</sup> Respondents had acted in accordance with the law.
- The Petitioner's prayers are ambiguous and futile.
- The Petitioner has no legal right to seek the reliefs it claims.

At the outset, the learned Counsel for the Petitioner submitted that he is no longer pursuing the interim reliefs and is only pursuing the substantive reliefs.

### **Analysis**

I will now consider the Petitioner's submissions with the Respondents' contention. The Petitioner's main contention is that by indiscriminate issuance of permits to open up filling stations the existing filling station's income is affected and therefore, taking this fact into consideration the Ministry of Petroleum Resource Development has decided to formulate a criterion to establish locations for new filling stations and this was done by the University of Moratuwa in collaboration with the Ceylon Petroleum Corporation, which resulted in P8.

It is the Petitioner's contention that P8 is a valid document that has to be implemented and the annexure to P8 describes the areas where new petrol sheds should be located. The learned President's Counsel for the Petitioner argues that, other than the petrol stations in annexure 2 found at page 74 of the brief, no new locations should be allocated to open new petrol sheds. In this background, Lanka IOC PLC had published a paper notice calling for lands to be used to put up new petrol sheds. The said notice is marked as P14, which the Petitioner submits is *ultra vires* of P8. Hence, the Petitioner contends that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents should be prohibited from granting approvals to locations which are not identified in P8. In essence, the Petitioner's argument is that P8 should be implemented to the letter and any attempt to deviate from it should be prohibited.

Let me now consider the document marked P8.

## The document P8

The document P8 has the heading “*Committee Report on Criteria for Setting up of New Filling Stations in Sri Lanka*”. The first paragraph of the report commences as follows:

*“Ceylon Petroleum Corporation proposed to establish criteria to select locations for new filling stations in Sri Lanka to minimise the conflicts arisen due to irrational awarding of permits to establish filling stations”.* (Emphasis added.)

It is clear that the document P8 is a result of a proposal of the management of the Ceylon Petroleum Corporation, and it has been proposed to minimize the conflicts that would arise in the event of irrational awarding of permits to establish filling stations. The Committee Report is signed by the Chairman of the committee, the Secretary to the Ministry of Petroleum, Chairman of Ceylon Petroleum Corporation and Chairman of Ceylon Petroleum Storage Petroleum Limited. It is clear that this report is a result of a proposal of the Ceylon Petroleum Corporation. This is evident from the first paragraph as highlighted by me. They have proposed in the said report that the 75 potential locations that have been identified should be shared between the Lanka IOC and the Ceylon Petroleum Corporation. The last paragraph clearly establishes that this report cannot be exhaustive as it states that the establishment of filling stations beyond the number of the said locations should be done by a professional entity and recommended by the board of directors and approved by the Ministry.

It is clear by the wording used that the report is non-exhaustive, and also, as per the report, if any new additional filling stations are to be established, it should be done subsequent to a study and on the recommendation of the board of directors. The board of directors meant here are the board of directors of the Ceylon Petroleum Corporation, who were the key players and had a monopoly over petroleum products in Sri Lanka. However, the Petitioner was not in a position to submit to this Court whether this report is a mere report or whether this report has any legal validity.

There is no evidence tendered to this Court to demonstrate that the report had been sent to the Line Ministry to be approved, or whether the board of the Ceylon Petroleum Corporation had approved the report, or whether this report had been absorbed into a policy paper and therefore, it has become the policy. In the circumstances, I cannot agree with the contention that P8 should govern the establishment of new petrol sheds, as the plain reading of the report it is clear that it is originated on a proposal and due to the wants of the Ceylon Petroleum Corporation. Further though the report states that

the proposed locations should be shared with Lanka IOC it appears that the committee that drafted the report had no member representing the Lanka IOC. Hence contrary to the submissions made by the learned Counsel for the Petitioner, the learned Counsel appearing for the added Respondent Lanka IOC denied that they are bound by the said report.

On the contrary all the Respondents, including the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, in their submissions strongly contended that this report has not received any approval by the Ministry and in the absence of any approval it was contended that it becomes a mere a report. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents in paragraph 8 of their objections, have specifically pleaded that the said report has never been approved by the Ministry of Power and Energy, and further in 2019 a decision had been taken to establish new fuel stations without considering the said report. The parties were not at variance that thereafter, when the locations were selected for the petrol filling stations, the said report had not been considered.

Upon inquiry by this Court, the Petitioner was not in a position to substantiate any material to demonstrate the legal validity of P8. In the absence of such, in my view, P8 has no legal force and becomes a mere report.

### **The document P14**

The Petitioner also relied on the document marked as P14, whereby the Lanka IOC had invited for lands to establish filling stations. The learned Counsel for the Petitioner contended that P8 does not contemplate the establishment of a petrol shed in Kaduwela. It is the contention of the Petitioner that P14 has virtually called for invitations for locations that had been identified by P8. I have considered the said document and I find that by the said document, Lanka IOC has informed that they wish to appoint dealers to filling stations throughout Sri Lanka in the locations depicted thereon. One of the locations given is Orugodawatte-Kaduwela. Hence, it is clear that Lanka IOC had contemplated to give a dealership and to open up a petrol shed between the land stretch from Orugodawatta to Kaduwela. The Petitioner strongly contended that the petrol shed established in Kaduwela in the premises of Cargills is illegal and in is violation of P8 and P14.

I have already dealt with the legal validity of P8. I find that P14 has no statutory flavour as it is only calling for entrepreneurs or corporates who possess suitable lands to set up

Lanka IOC petrol sheds, and their desire to appoint dealers to fuel sheds. It appears that P14 anyway is a publication made by Lanka IOC.

Further, P14 calls for distributors who owns land and expresses the Lanka IOCs willingness to appoint a dealer to operate a petrol shed between Orugodawatte and Kaduwela. As I observe the paper advertisement does not specify a particular location, it merely state that a location between Orugodawatte – Kaduwela. Thus, it can be at any location within the contemplated area. Further in the absence of any specific location it can be the suburbs of Kaduwela or in the heart of Kaduwela.

Therefore, in my view the Lanka OIC shed the Petitioner complains of is within the location stated in P14. Hence, the Petitioner’s submission that the particular petrol shed in Kaduwela is in violation of P8 and P14, has to fail.

Let me now consider the objections that have been raised.

### **Are the necessary parties before the Court?**

Further, the best party to ascertain and get a clarification of the document P8 would be the party whose decision was the outcome of P8, which is the Ceylon Petroleum Corporation. However, I find that the Ceylon Petroleum Corporation is not a party to this case. As per the Petitioner’s own argument the Petitioner is deriving its alleged rights from a document of the Ceylon Petroleum Corporation, pertaining to the Petitioner’s own dealerships and filling stations, but for reasons best known to the Petitioner, the Petitioner has failed to name them as a party.

It is observed by this Court, that the Petitioner has made Cargills Ceylon PLC a Respondent. However, it was submitted that the said two petrol sheds are not owned by Cargills Ceylon PLC, but owned by a distinct separate legal entity by the name Cargills Retail (Private) Limited, which is a subsidiary of the 3<sup>rd</sup> Respondent company. The said legal entity has not been made a party to this application. Hence, any order made as prayed for in the prayers will have an effect on the said legal entity. It is trite law that any party who is affected by an order of Court becomes a necessary party. In coming to this conclusion I have considered and applied the test elaborated in *Hatton National Bank v. Commissioner General of Labour and others CA Writ 457/2011 decided on 31.01.2020*, where it was held that

*“the rule is that all those who would be affected by the outcome of an application should be made respondents to such application.”*

Failure to name a necessary party is fatal to a Writ Application. In arriving at this conclusion, I have followed the cases of ***Rawaya Publishers and another v. Wijeyadasa Rajapaksha* 2011 (3) SLR 213**, ***Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero and others* 2011 (2) SLR 258**, ***Gnanasambanthan v. Rear Admiral Perera and others* 1998 (3) SLR 169**, and ***Porakara Mudiyansele Aruna Samantha Kumara v. T.A.C.N. Thalagama and 36 others* CA Writ 238/2020 decided on 21/05/2021**.

The petrol sheds that are impugned and mentioned in the Petition belong to Lanka IOC. However, the Petitioner had not named Lanka IOC as a party. In fact, Lanka IOC has made an application to intervene in this case, which was allowed, and carries the status of an Intervening Respondent. This again demonstrates the failure of the Petitioner to bring in necessary parties when this action was instituted. As per the Petitioner’s own documents marked as P9 it is clear that the petrol sheds that the Petitioner complained of are Lanka IOC sheds. Hence, the Petitioner was aware that the dealerships are Lanka IOC when filing the Petition. Yet the Petitioner for reasons best known to itself decided to omit the Lanka IOC as a party to this Application. Further this is established by the document marked as P14. The Petitioner itself states that no dealership should be given to locations outside of what is contemplated in P14. P14 is a publication of Lanka IOC. Surprisingly, with this knowledge, the Petitioner decided not to make Lanka IOC a party to this Application, and failed to explain the Petitioner’s failure to name Lanka IOC as a party. In my view, the Petitioner, for reasons best known to the Petitioner, has decided not to name a party who will be affected by this decision. Hence, the Petitioner is guilty of not bringing the necessary parties before this Court. Thereby, this Court upholds the objection that this Writ Application has to fail for want of necessary parties.

Let me now consider the prayers of the Petitioner.

### **Prayers of the Petitioner**

This Court observes the Petitioner’s substantive prayers are pleaded from prayer (e) to (h). By prayer (e), the Petitioner is attempting to restrain the 3<sup>rd</sup> Respondent by way of a Writ of Prohibition from establishing or operating a fuel shed, filling station, or petroleum dealership at Cargills Food City, Kaduwela, and Cargills Food City, Wattala or at any other premises. It is not disputed that both petrol sheds are now established

and are operating. Further, most importantly, the Writ is sought against the 3<sup>rd</sup> Respondent. As submitted by the Counsel for the 3<sup>rd</sup> Respondent, neither sheds are owned by the 3<sup>rd</sup> Respondent but are owned by Cargills Retail (Private) Limited, which is a legal entity of its own, separate from the 3<sup>rd</sup> Respondent. It is also observed by this Court that the said prayer is vague as it states “for any other premises of the 3<sup>rd</sup> Respondent”. Without specifying, the Petitioner is seeking a Writ of Prohibition blanketly against the premises owned by the 3<sup>rd</sup> Respondent. Hence, a Writ of Prohibition cannot be obtained when the prayer is vague and also in this instance against a party who does not own the petrol sheds. Thus, the said prayer has to fail.

In prayer (g), the Petitioner is seeking a Writ of Prohibition restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from acting in derogation or in any manner contrary to the committee report marked as P8. This Court has already held that P8 has no legality as it is neither policy nor accepted and implemented by way of a circular by any of the Respondents. In the absence of any legal force, P8 becomes a mere committee report. Hence, this prayer fails.

I have considered prayer (f), where the Petitioner is seeking a Writ of Prohibition against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from granting, permitting the establishment and operation of filling stations contrary to the provisions of the Ceylon Petroleum Corporation Act and the Petroleum Products (Special Provisions) Act. As per the submissions made by the Counsel for the Respondents, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents do not grant dealerships allowing the establishment and operation of fuel stations. It is done by the respective companies. In any event, the Petitioner has failed to establish that any of the acts of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have violated the above-stated Acts, rules, procedure or regulations applicable to the industry. Therefore, the said prayer too has to fail.

By prayer (h), the Petitioner is seeking a Writ of *Mandamus* directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from processing applications seeking permission to operate fuel sheds. In my view, this prayer has to fail for many reasons. Firstly, it is not the 1<sup>st</sup> and 2<sup>nd</sup> Respondents who process applications seeking permission to operate fuel sheds. Secondly, in any event, the Petitioner has not made this request to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, and there is no material to substantiate that there is a refusal by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to exercise their duties vested under the law. Therefore, the Petitioner’s prayers that seek substantive relief from this Court have to fail.

## **Conclusion**

After considering the submissions of all the Counsel and the material submitted to this Court, I am of the view that the Petitioner has failed to establish a *prima facie* case to obtain notice from this Court. Further the application has to fail for the want of necessary parties Therefore, I refuse to issue formal notice on the Respondents and also proceed to dismiss this Writ Application.

**Judge of the Court of Appeal**

**Mahen Gopallawa, J**

I agree

**Judge of the Court of Appeal**