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

In the matter of revision application under and in terms of Article 138 of the Constitution of the Republic of Sri Lanka.

**Court of Appeal Case No: CPA/0030/2021**

**HC Writ Application No: HCWA 02/2018**

**R.A. Chandani Ranasinghe**,
Induruwagoda,
Payagala.

**Petitioner**

**Vs**

1. **Thusitha Kularathna**,
   Chairman,
   Western Province Passenger Transport Authority,
   No. 89, Rangamapaya,
   Kaduwela road, Battaramulla.

2. **Western Province Passenger Transport Authority**,
   No. 89, Rangamapaya,
   Kaduwela road, Battaramulla.

3. **Kumara Rathnayaka**,
   Chief Operational Manager,
   Western Province Passenger Transport Authority,

No. 89, Rangamapaya,
Kaduwela road, Battaramulla.

4. **Asanga S. Perera**,
Assistant manager (Operations),
Western Province Passenger Transport Authority,
No. 89, Rangamapaya, Kaduwela road, Battaramulla.

**Respondents**

**AND NOW BY AND BETWEEN**

**R.A. Chandani Ranasinghe**,
Induruwagoda,
Payagala.

**Petitioner-Petitioner**

**Vs**

1. **Thusitha Kularathna**,
Chairman,
Western Province Passenger Transport Authority,
No. 89, Rangamapaya,
Kaduwela road, Battaramulla.

1A. **Mr. Prasanna Sanjeewa**,
Chairman, Western Province Passenger Transport Authority,

No. 89, Rangamapaya, Kaduwela road, Battaramulla

**Substituted 1A Respondent-Respondent**

2. **Western Province Passenger Transport Authority**,
   No. 89, Rangamapaya,
   Kaduwela road, Battaramulla.

3. **Kumara Rathnayaka**,
   Chief Operational Manager,
   Western Province Passenger Transport Authority,
   No. 89, Rangamapaya,
   Kaduwela road, Battaramulla.

4. **Asanga S. Perera**,
   Assistant manager (Operations),
   Western Province Passenger Transport Authority,
   No. 89, Rangamapaya, Kaduwela road, Battaramulla.

**Respondent-Respondents**

Before : **D. THOTAWATTA, J.**
**K. M. S. DISSANAYAKE, J.**

Counsel : Migara Kodithuwakku for the Petitioner-Petitioner.

Nimal Rajapaksha, Nilanth Kumarage with Arjun Perera for the 2nd, 3rd and 4th Respondent-Respondents.

Substituted 1A Respondent-Respondent is absent and unrepresented.

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| Argued on | : | 21.10.2025 |
| Written Submissions of the Petitioner-Petitioner tendered on | : | 17.12.2025 |
| Written Submissions of the Substituted 1A -Respondent-Respondent tendered on | : | Not tendered. |
| Written Submissions of the 2nd, 3rd and 4th -Respondent-Respondents tendered on | : | 10.12.2025 |
| Decided on | : | 11.02.2026 |

**K. M. S. DISSANAYAKE, J.**

The instant application in revision has been preferred to this Court by the Petitioner-Petitioner (hereinafter called and referred to as 'the Petitioner') against the 1st to 4th Respondent-Respondents (hereinafter called and referred to as 'the

1st to 4th Respondents') seeking to revise and set aside the order of the learned High Court Judge of the Western Province holden at Colombo dated 12.03.2020 (hereinafter called and referred to as 'the Order') made in the exercise of the writ jurisdiction vested in him by Article 154P(4)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as 'the Constitution') whereby, the learned High Court Judge of the Western Province holden at Colombo had dismissed the application made thereto, by the Petitioner seeking a writ of *Certiorari* to quash the decision made by the 1st and 2nd Respondents and embodied in the document annexed to her petition filed in the High Court of the Western Province holden at Colombo marked as **X12** and a writ of *Mandamus* compelling the 1st and 2nd Respondents to issue the Petitioner a permanent Passenger Service Permit in terms of the document annexed to her petition filed in the High Court of the Western Province holden at Colombo marked as **X3**.

Since, the dismissal of the applications for writs of *Certiorari* and *Mandamus* is founded upon two different findings arrived at by the learned High Court Judge of the Western Province holden at Colombo, it would I think, be prudent and convenient to deal with them separately.

**The findings of the learned High Court Judge of Colombo leading to the dismissal of the application for a writ of *Certiorari*.**

As is discernible from the averments contained in the paragraphs of the petition furnished to this Court by the Petitioner in the instant application in revision, the application filed by the Petitioner in the High Court of the Western Province holden at Colombo for a writ of *Certiorari* to quash the decision contained in **X12**, had arisen from granting of approval by the impugned decision of the 2nd Respondent which was alleged to have been made by him on the instructions of the 1st Respondent, for the purpose of temporary suspension of the operation of the bus bearing No. 62-4140 until further notice and until such time as new timetable was prepared.

Relying *inter-alia*, on the binding judicial precedent in **Namunukula Plantation Itd Vs. Minister Of Lands And Others-SC APPEAL NO. 46/2008-Decided on 13.3.2012**, the learned High Court Judge of the Western Province holden at Colombo had proceeded to dismiss the application for a writ of *certiorari* on the premise that the Petitioner had not furnished and/or suppressed to Court material facts relevant to the determination of her application for a writ of *certiorari* in that she had not furnished to Court a material document which has a direct bearing on the adjudication of the issue before it namely; Condition 7 among any other terms and conditions stipulated in page 4 of the Passenger Service Permit for; it was stated in **X12** that approval for the temporary suspension of the running of the bus in question had been granted in terms of the Condition No. 07 among any other terms and conditions contained in the page 4 of the Passenger Service Permit as authorized by the Provincial Council Statute No. 01 of 1992.

It is in this context, it would be pertinent to examine the relevant part of the decision contained in **X12** and it may be reproduced *verbatim* the same in the language it was written as follows;

> "බස්නාහිර පලාත් මාර්ගස්ථ මගී ප්‍රවාහන අධිකාරියේ 1992 අංක 01 දරණ පලාත් සභා ප්‍රඥප්තියෙන් බලය පවරා ඇති, මගී සේවා අවසර පත්‍රයේ (පිටු අංක - 04 ) නියමයන් හා කොන්දේසි වල අංක 07 යටතේ ධාවනය තාවකාලිකව නැවතීමට අවසර ලබාදීම පහත සඳහන් පරිදි අනුමත කරමි."

Hence, it becomes apparent that approval for the temporary suspension of the running of the bus in question had been granted in terms of the condition No. 07 among any other terms and conditions contained in the page 4 of the Passenger Service Permit as authorized by the Provincial Council Statute No. 01 of 1992.

In the circumstances, the condition No. 07 among any other terms and conditions contained in the page 4 of the Passenger Service Permit has a direct bearing on the adjudication of the issue so raised by the Petitioner in her

application for writ of *certiorari* before the High Court of the Western Province holden at Colombo and therefore, it is of the utmost necessity for the learned High Court Judge of Colombo to carefully, examine the condition No. 07 among any other terms and conditions contained in the page 4 of the Passenger Service Permit before coming to a finding as to whether the impugned decision contained in **X12** is intra-vires or ultra-vires. Hence, it is incumbent upon the Petitioner to furnish to Court along with her petition Condition No. 07 among any other terms and conditions contained in the page 4 of the Passenger Service Permit by virtue of which the said decision was made by the 1st Respondent, for the consideration of Court, for; decision of the Court would no doubt, rest on the Condition No. 07 contained in the page 4 of the Passenger Service Permit. However, it is significant to observe that the Petitioner had not adduced any reason why she had not furnished to Court such a very material document as is necessary for the adjudication of the issue before it, namely; the Condition No. 07 contained in the page 4 of the Passenger Service Permit for consideration by the Court; nor had she reserved to herself the right to tender it at a latter stage of the proceedings; nor, had she prayed for an order directing the Respondents to tender it to Court if it is in their possession or power.

It is in this context, it would be most relevant and material to consider the observations made by Court in **Namunukula Plantation Itd Vs. Minister Of Lands And Others** (Supra) wherein it was stated at page 8 thereof that "It is settled law that a person who approaches the Court for grant of discretionary relief, to which category an application for certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. Learned Deputy Solicitor General has in this connection invited our

attention to the decision of this Court in W.S.Alphonso Appuhamy v L. Hettiarachchi (Special Commissioner, Chilaw), (1973) 77 NLR 131, in which it was found that an applicant for a mandate in the nature of a writ of mandamus had suppressed and misrepresented material facts. This Court decided the case on its merits, but observed that the case was one in which the principles set out in the celebrated English decision of King v The General Commissioners for the Purpose of the Income Tax Acts for the District of Kensington-Ex-parte Princess Edmond de Poignac (1917) 1 K.B. 486 would have applied, and the Court, in its discretion, could have dismissed the application in limine.

It was further held by Court in **Namunukula Plantation Itd Vs. Minister Of Lands And Others** (Supra) at Page 9 that, "If any party invoking the discretionary jurisdiction of a court of law is found wanting in the discharge of its duty to disclose all material facts, or is shown to have attempted to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person."

It was held in ***Alphonso Appuhamy v. Hettictrachchi*** **1973 NLR 131** at page 136 that, "The necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a writ or injunction is made and the process of the Court is invoked is laid down in the case of The King v. The General Commissioners for the Purpose of the Income Tax Acts for the District of Kensington Ex-parte Princess Edmond de Poignac — (1917)1 Kings Bench Division 486. Although this case deals with a writ of prohibition the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the

Court would not go into the merits of the application, but will dismiss it without further examination. Lord Cozens-Hardy M. R., after stating that the authorities in the books are so strong and so numerous quoted the high authority of Lord Langdale and Rolfe B. in the case of Dalglish v. jarvie—2 Mac. & G. 231, 238, the head note of which states : — " It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any facts which he has omitted to bring forward." He then quoted the observations made in the course of the argument by Lord Langdale :— " It is quite clear that every fact must be stated or, even if there is evidence enough to sustain the injunction, it will be dissolved." Lord Cozens-Hardy M. R., commenting on this stated " That is to say, he would not decide upon the merits, but said that if an applicant does not act with uberrima fides and put every material fact before the Court it will not grant him an injunction, even though there might be facts upon which the injunction might be granted, but that he must come again on a fresh application ". Rolfe B., added : — " I have nothing to add to what Lord Langdale has said upon the general merits of the case ; but upon one point it seems to me proper to add thus much, namely, that the application for a special injunction is very much governed by the same principles which govern insurance, matters which are said to require the utmost degree of good faith, ' uberrima fides' .In cases of insurance a party is required not only to state all matters within his knowledge, which he believes to be material to the question of the insurance, but all which in point of facts are s o ..... So here, if the party applying for a special injunction, abstains from stating facts which the Court thinks are most material to enable it to form its judgment, he disentitles himself to that relief which he asks the Court to grant." Lord Cozens-Hardy M. R., adds this comment: — " That is merely one and perhaps rather a weighty authority in favour of the general proposition which I think has been established, that on an ex-parte application uberrima fides is required and unless that can be established, if there is anything like deception practised on the Court, the Court

ought not to go into the merits of the case, but simply say, " We will not listen to your application because of what you have done."

In light of the law and the facts set out above, I would hold that there had been a suppression of material facts directly, arising out of the Condition No. 07 among any other terms and conditions contained in the page 4 of the Passenger Service Permit by virtue of which the said decision was made by the 1st Respondent document and therefore the High Court of the Western Province holden at Colombo was justified in refusing a writ of *certiorari* without going into the merits of the case, for; so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination.

Hence, I would see no reason to interfere with the aforesaid findings of the learned High Court Judge of Colombo which led him to have dismissed the Petitioner's application for a writ of *certiorari* against the 1st and 2nd Respondents and therefore, they should be affirmed.

**The findings of the learned High Court Judge of Colombo leading to the dismissal of the application for a writ of *mandamus*.**

It is settled law that *mandamus* is an order from a Court commanding a public authority or official to perform a public duty, in the performance of which the applicant has a sufficient legal interest.

The Petitioner's application for a writ of *mandamus* is based on the document annexed to the petition filed in the High Court of the Western Province Holden at Colombo marked as **X3**. However, it is a receipt issued by the 2nd Respondent apparently, to the Petitioner in receipt of tender charges and it does not in any manner, impose a public duty to issue to the Petitioner a permanent Passenger Service Permit to operate a Bus as rightly, observed by the learned High Court Judge of Colombo.

Hence, the learned High Court Judge of Western Province holden at Colombo is entirely, justified in refusing to grant a writ of *mandamus* against the 1st and 2nd Respondents compelling them to issue to the Petitioner a permanent Passenger Service Permit to operate a Bus.

Hence, I would see no reason to interfere with the aforesaid findings of the learned High Court Judge of Colombo which led him to have dismissed the Petitioner's application for a writ of *mandamus* against the 1st and 2nd Respondents and therefore, they should be affirmed.

In view of the foregoing, I would hold that the instant application in revision is not entitled to succeed both in fact and law and as such it should be dismissed *in-limine* with costs fixed at Rs. 25,000/- payable only to the 2nd Respondent.

***JUDGE OF THE COURT OF APPEAL***

**D. THOTAWATTA, J.**

I agree.

***JUDGE OF THE COURT OF APPEAL***