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

In the Matter of an Application for writs of *Certiorari* and *Prohibition* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 281/2014

1. Sri Lanka Bottled Water Association
   No. 281-1/6, R.A. de Mel Mawatha,
   Colombo - 03.

2. Beverage Association of Sri Lanka
   No.47, Alexandra Place,
   Colombo - 07.

3. Cosmetics Manufacturers Association of Sri Lanka
   No.45, Braybrooke Place,
   Colombo - 02.

PETITIONERS

Vs.

1. Consumer Affairs Authority
   1st and 2nd Floor,
   CWE Secretariat Building,
   No. 27, Vauxhall Street,
   Colombo - 02.

2. Mr. Rumy Marzook
   Former Chairman,
   Consumer Affairs Authority,

1st and 2nd Floor,
CWE Secretariat Building,
No. 27, Vauxhall Street,
Colombo - 02.

2A. Dr. R.M.K. Ratnayake
Former Chairman,
Consumer Affairs Authority,
1st and 2nd Floor,
CWE Secretariat Building,
No. 27, Vauxhall Street,
Colombo - 02.

2B. Mr. W. Hasitha Tilekeratne
Former Chairman,
Consumer Affairs Authority,
1st and 2nd Floor,
CWE Secretariat Building,
No. 27, Vauxhall Street,
Colombo 02.

2C. Mr. Rumy Marzook
Former Chairman,
Consumer Affairs Authority,
1st and 2nd Floor,
CWE Secretariat Building,
No. 27, Vauxhall Street,
Colombo 02.

2D. Mr. D.M.S. Dissanayaka
Major General (Retired)
Chairman,
Consumer Affairs Authority,
1st and 2nd Floor,
CWE Secretariat Building,
No. 27, Vauxhall Street,
Colombo 02.

3. Hon. Johnston Fernando

Former Minister of Co-Operatives and
Internal Trade,
8th Floor, CWE Secretariat Building,
No. 27, Vauxhall Street,
Colombo - 02.

3A. Hon. Mallawaarachchige Gamini
Jayawickrema Perera
Former Minister of Food Security,
CWE Secretariat Building,
No. 27, Vauxhall Street,
Colombo - 02.

3B. Hon Abdul Rishad Bathiudeen
Former Minister of Industry and
Commerce,
No.73/1,
Galle Road,
Colombo - 03.

3C. Hon. Chamal Rajapaksa
Minister of Internal Trade, Food
Security and Consumer Welfare,
No. 288, Sri Jayawardenapura
Mawatha,
Rajagiriya.

4. Hon. Attorney General
Attorney General's Department
Colombo - 12.

RESPONDENTS

Before : Dhammika Ganepola, J.
Damith Thotawatta, J.

Counsel : Faisz Musthapha, PC with Riad Ameen
and Rushida Rodrigo instructed by

		Tharmarajah Tharmaja for the Petitioners. Sumathi Dharmawardena, ASG, PC with Shehan zoysa, SSC for all the Respondents.
Argued on	:	10.02.2025
Written Submissions tendered on	:	Petitioners : 03.06.2025
Decided on	:	28.08.2025

Dhammika Ganepola, J.

In the instant application, the Petitioner Associations challenge the Direction No. 49, dated 24th February 2014, by the 2nd Respondent and published in the Gazette Extraordinary bearing No. 1851/1, marked as P6. The Petitioner Associations have been duly incorporated as Companies under the company law of Sri Lanka and consist of several members in their Associations who manufacture bottled water, beverages and cosmetics. The Petitioners submit that the 2nd Respondent had issued Direction No. 49 published in the Gazette Extraordinary No.1851/1 dated 24th February 2014, acting in terms of Section 10(1)(a) of the Consumer Affairs Authority Act No.9 of 2003(hereinafter sometimes referred to as 'the Act'). Said Direction P6 had introduced a requirement of a 'security stamp' for certain specified goods such as Soft Drinks, Bottled Water, Bottled Mineral Water, Branded Edible Oil, Toothpaste, all types of Soap, Shampoo, Paint, Electric Switches, Sockets, Circuit Breakers, for the first time. The Petitioners state that the Petitioners have not been given prior notice or informed of any particular reason for the introduction of the said requirement for a 'security stamp'. The Ceylon Chamber of Commerce, of which many of the Petitioner Associations are constituents, intervened in the issue and had a dialogue with the 1st and the 2nd

Respondents. At the meeting held on 13th May 2014, the 3rd Respondent had informed the Ceylon Chamber of Commerce that the said Direction P6 will not be enforced, and compliance with such will be voluntary. However, the Petitioners claim that in the absence of the withdrawal of the said Direction P6, there is an imminent risk of its enforcement by the officers of the 1st Respondent and/or by the public health inspectors. Further, the Petitioners state that the implementation of the Direction P6 is illegal, null and void and of no force or avail in law for the reasons specified in the Petition. Accordingly, the Petitioners seek a Writ of Certiorari quashing Direction No. 49 dated 24th February 2014, published in the Gazette Extraordinary bearing No. 1851/1 marked as P6 and a Writ of Prohibition prohibiting the 1st and 2nd Respondents from acting in pursuance of the aforesaid Direction No. 49.

When this matter came up for arguments on the 10th of February 2025, both parties concluded their oral submissions. Although the Respondents initially opposed the application of the Petitioners, at the stage of argument, the State Counsel who appeared for the Respondents took up a neutral stance.

It was revealed that a foreign company registered with the Board of Investment, called 'SICPA,' had been entrusted to supply the aforesaid security stamps as a service provider as required under Direction P6. The service provider 'SICPA' had made an application for intervention in the instant application and subsequently had withdrawn it. It was further revealed that the said service provider 'SICPA' had initiated an arbitration subsequent to the withdrawal of the above intervention application, claiming liquidated damages against the 1st Respondent. Further, the award in the aforesaid arbitration had been issued in favour of the said service provider. It was further revealed that at present, the matter for enforcement of the aforesaid arbitral award is pending before the Supreme Court. It is observed that under such circumstances, the Respondents have deviated from its original stance and had taken up a neutral stance at the argument stage of the instant matter.

As per Direction P6, a direction has been issued to all manufacturers, distributors, traders and importers of the relevant products to comply

with the procedure set out therein by the Consumer Affairs Authority. Paragraph (1) of the above Direction P6 stipulates that no product shall be manufactured, imported, distributed, transported, stored, sold, or offered for sale in wholesale or in retail unless a ‘‘security stamp’’, obtained from the Consumer Affairs Authority, is affixed on each and every pack, container or the wrapper of the aforesaid products. Further, the other contents in Direction P6 facilitate and ensure the affixation of a ‘‘security stamp’’ and the introduction of the service provider. Accordingly, it is apparent that in view of the aforesaid Direction P6, a product cannot be sold or supplied without a ‘security stamp’ as prescribed.

The above Direction P6 had been issued in terms of Section 10(1)(a) of the Consumer Affairs Authority Act. Said Section 10 of the Act is as follows.

(1) The Authority may, for the protection of the consumer

(a) issue general directions to manufacturers or traders in respect of labelling, price marking, packeting, sale or manufacture of any goods; and

(b) issue special directions to any class of manufacturers or traders, specify:

(i) the times during which and the places at which, such goods may be sold; and

(ii) any other conditions as to the manufacturing, importing, marketing, storing, selling and stocking of any goods.

(2) Every direction issued by the Authority under subsection (1) shall he published in the Gazette and in at least one Sinhala, one Tamil and one English newspaper.

(3) Any manufacturer or trader who fails to comply with any direction issued under subsection (1) shall be guilty of an offence under this Act.

(4) *Any person who removes, alters, obliterates, erases or defaces any label, description or price mark on any goods in respect of which a direction under subsection (1) has been issued, or sells or offers for sale any such goods from or on which the label, description or price mark has been removed. altered, obliterated, erased or defaced, shall be guilty of an offence under this Act*.

The Petitioners assert that the scheme for implementing the affixation of a mandatory 'security stamp' as outlined in Direction P6 lacked the express legislative authority and was enacted without due authority and thus should be considered as *ultra vires*.

It was further submitted on behalf of the Petitioners that such a compulsory obligation to purchase the 'security stamp', as mandated under Direction P6, would have the effect of indirectly imposing a levy within the meaning of Article 148 of the Constitution. It is the position of the Petitioner that Section 10(1) of the Consumer Affairs Authority Act, by virtue of which the impugned direction has been issued, does not authorise the competent authority to issue directions imposing a tax rate or any other nature of levy on goods.

Thus, at this juncture, it is necessary to consider whether the Section 10(1) of the Act provides for the 2nd Respondent to issue directions in the nature of Direction P6. It is observed that Section 10(1) of the Consumer Affairs Authority Act does not authorise the competent authority to issue directions imposing a tax rate or any other levy on goods. Section only authorizes the competent authority to issue general directions to manufacturers or traders in respect of price marking, labelling and packeting, sale or manufacture of goods. When the requirements under Direction P6 are taken into account, it appears that such directions require the manufacturers and importers to purchase a "security stamp" from the service provider and to affix the same on their products prior to its sale or distribution. Said direction has been issued in terms of Section 10(1)(a) of the Act. As per Section 10(3) of the Act, failure to comply with any direction issued under subsection (1) shall be considered as committing an offence under the Act. Since Direction P6 issued under the

aforesaid Section 10(1)(a) compels the purchase and official affixation of a ‘security stamp’ and prevents the relevant products from being sold or supplied without a ‘security stamp,’ failing to comply with such Direction shall constitute an offence and entail penalties under the Act. As such, the requirement to purchase a ‘security stamp’ cannot be regarded as optional or voluntary, but compulsory. Accordingly, the Court is of the view that the compulsory nature of the above-requirement to purchase a “security stamp” takes the nature of a tax or a levy. However, it is observed that imposition of such requirement in the nature of a tax or levy was not contemplated under Section 10(1)(a) of the Act. It is observed that Section 10(1)(a) of the Act permits the issuance of general directions to manufacturers or traders in respect of labelling and packeting of any goods. However, the aforesaid requirement of affixing a “Security Stamp” as required under Direction P6 cannot be considered as directions to manufacturers or traders in respect of labelling and packeting. Because Section 10(1)(a) of the Act does not specifically permit the Authority to make directions setting a fee to be paid to a service provider for the issuance of such 'security stamp’. However, even if assuming without conceding that said ‘security stamp’ is considered as a mode of labelling under Section 10(1)(a),it is observed that the Authority is not empowered to make directions setting a fee for a service provider for such 'security stamp’ under Section 10 of the Act.

Further, under Section 10(1)(a) of the Consumer Affairs Authority Act, the Authority is authorised to issue general directions to manufacturers or traders. In contrast, Section 10(1)(b) specifies the authority on the issuance of special directions which may be issued to any class of manufacturers or traders.

The impugned Direction P6 has been issued under Section 10(1)(a) of the Act. The general directions issued under such Section will apply to all manufacturers or traders, not to any specific class of manufacturers or traders. However, Direction P6 is only applicable to a certain class of manufacturers or traders, those who manufacture or import the articles specified in the Schedule to Direction P6, i.e. Soft Drinks, Bottled Water /Bottled Mineral Water, Branded Edible Oil, Toothpaste, All types of Soup,

Shampoo, Paint, Electric Switches, Sockets, and Circuit Breakers and the same takes the nature of special direction. Hence, Direction P6 cannot be considered as general directions issued within the purview of Section 10(1)(a) of the Act. In any event, even Section 10(1)(b) of the Act, which permits the issuance of special directions does not allow the issuance of special directions in respect of labelling.

In the above context, I am of the view that the 3rd Respondent lacked the authority to issue the Direction P6 in terms of Section 10(1)(a) of the Act.

In R v. Secretary of State for Social Security ex p Sutherland [1997] COD 222, in holding a social security regulation to be ultra vires, Laws J said:

> *"I do not consider there to be much room for purposive construction of subordinate legislation; where the executive has been allowed by the legislative to make law, it must strictly abide by the terms of its delegated authority."*

It is also important to cite the observations made by Sharvananda, J. in the case of The Attorney-General of Ceylon v. W.M. Fernando 79 (1) NLR 39 where it was held as follows:

> *"Subordinate legislation is always liable to be attacked by Courts on the ground that it is ultra vires, that it goes beyond the powers conferred by the enabling statute on the rule-making agency. Such subordinate resolution may be ultra vires by reason of its contents or by reason of procedural defects*
>
> *……*
>
> *The doctrine that subordinates legislation is invalid if it is ultra vires is based on the principle that a subordinate agency has no power to legislate other than such as may have expressly been conferred by the supreme Legislature. Subordinate legislation is fundamentally of a derivative nature and must be exercised within the periphery of*

the power conferred by the enabling Act. If a subordinate law-making authority goes outside the powers conferred on it by the enabling statute, such legislation will ipso facto be ultra vires.

In view of the rationale upheld in the aforementioned cases, it is apparent that where the subordinate agency lacks the authority to issue such legislation, such subordinate legislation should be considered as *ultra vires*. Similarly, in the instant matter where the 3rd Respondent lacked the authority to issue the directions in the nature of Direction P6, such Direction is to be considered as *ultra vires.*

Further, relying upon the decision in Kithsiri Gunarathne v. S. Kotakadeniya (C.A. Application No. 58/1990, C.A. minutes of 13.07.1990), which was a similar application where the Court of Appeal held that imposition of such a compulsory fee on license holders in the nature of levy in fact came within the meaning of Article 148 of the Constitution, the Petitioners contend that the imposition of such requirement by Direction P6 was a clear violation of the Article 148 of the Constitution. In the said case, S.N. Silva J. (as he was then) observed that:

"The fee of Rs. 75/-, which license holders were required to pay by the 1st Respondent according to the notices that were published, is not a prescribed fee under the Act. The learned Deputy Solicitor General sought to justify the recovery of this fee on the basis that was done. This contention, in my view, is untenable. It is correct that there may be situations where a statutory authority or a public officer lawfully enters into some form of contract which a member of the public, which involves the payment of a fee for services rendered, work done, or goods supplied. These are voluntary payments made by members of the public pursuant to a contract or other arrangements entered into at arm's length. The payment of Rs 75 was not made on such a basis. The notices marked 'P' and 'Q', issued by the 1st Respondent, require driving license holders to make that payment. It could by no means be considered a voluntary payment. It has to be considered as a levy that was made. In this

regard, I wish to refer to Article 148 of the Constitution, which reads as follows:

> *"Parliament. shall have full control over public finance. No tax rate or any other levy shall be imposed by any local authority or any other public authority, except by or under the authority of law passed by Parliament or of any existing law".*

Further, S.N. Silva J. held that:

"It is clear this salutary provision of the Constitution that a public authority is prohibited from charging any tax, rate or any other levy except under the authority of a law passed by Parliament. Therefore, in my view, the Commissioner of Motor Traffic could lawfully require any members of the public to make a payment only if such a payment was warranted by law. As noted above, the sum of Rs. 75/- is not a prescribed fee under the Act. In these circumstances, I am of the view that the recovery of this fee by the 1st Respondent was illegal and contrary to the provisions of Article 148 of the Constitution."

....

"Powers to delegate will be constituted in the same way as other powers and will not therefore extend to sub-delegation in the absence of some express or implied provisions to that effect. The delegate must also keep within the bounds of the power actually delegated, which may be narrower than that possessed by the delegating authority; it will be no defence that that authority could, had it wished, have delegated wider power."[Cook v. Ward (1877) 2 CPD 255; Blackpool Cpn v. Locker[1948] 1KB 349].

The Petitioner brought to the notice of this Court the observations made by the Court of Appeal, in Maersk (Lanka) Pvt Ltd v. Minister of Ports and Aviation and Others (2012)1 SLR 9, which read as follows:

> *"Imposition of a tariff is a financial burden on the Subject. It, therefore, should have been strictly disclosed in the Act. The principal act does not relate to any taxation to be ordered by the minister. The executive has no power to impose tax by regulation without there being an express power given to the minister. In the controlling statute."*

As discussed above, I am of the view that imposition of such a requirement under the Direction P6 indirectly imposes a levy upon such manufacturers and importers, which is not contemplated under Section 10(1) of the Consumer Affairs Authority Act. Similarly, the Act does not specify payment of the relevant amount to the service provider as a prescribed fee under the Act. Where the law passed by the Parliament has not envisaged the Authority charging any tax, rate or any other levy in terms of Section 10(1) of the Act, I am of the view that the 2nd Respondent issuing the Direction P6 imposing directions in the nature of charging levies is contrary to Article 148 of the Constitution.

In the above backdrop, it is my view that Section 10 of the Consumer Affairs Authority Act does not empower the 2nd Respondent to make and issue Direction P6, which imposes a compulsory obligation on the manufacturers and importers to purchase a 'security stamp', which has the effect of indirectly imposing a levy or tax on such manufacturers and traders. Therefore, the said Direction P6 shall *ipso facto* be *ultra vires* in terms of Section 10 of the Act and shall have no effect in law.

The Petitioners have taken up several other grounds, such as unreasonableness, uncertainty, and a consequence of an illegal process carried out without jurisdiction in breach of the procurement guidelines, upon which the above Direction P6 should be quashed. However, since this Court is of the view that the impugned Direction P6 is *ipso facto ultra vires* and has no force in law, it is my view that consideration of the above grounds advanced by the Petitioner are unnecessary.

In view of the reasons mentioned above, I issue the Writ of Certiorari and the Writ of Prohibition as prayed for in the prayer of the Petition.

Application *is allowed*.

Judge of the Court of Appeal

Damith Thotawatta, J.

I agree.

Judge of the Court of Appeal