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

In the matter of an application under Article 140 of the Constitution for mandates in the nature of writs of certiorari and prohibition

CA Writ Application No.147/2024

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

PETITIONER

Vs.

1. Ceylon Petroleum Corporation,
   No.609, Dr. Dannister De Silva Mawatha,
   Colombo 09.

RESPONDENT

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Dr. Romesh De Silva, PC with Niran Anketell instructed by Sanath Wijewardane for the Petitioner.
Suren Gnanaraj with Rashmi Dias instructed by T.H.M.D.J. Peiris for the Respondent.

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Written Submissions: By the Petitioner – 14.07.2025

By the Respondents – 14.07.2025

Argued on: 16.06.2025.

Judgment On: **29.08.2025.**

Dr. Sumudu Premachandra J.

1] The Petitioner, the Petroleum Dealers' Association seeks writs of certiorari quashing the decisions and documents marked "P3" (circular No. 1053 dated 05/07/2022)," "P5" (letter dated 29/11/2023 letter relating to implementing of -Monthly Utility Fee-MUF,") and "P9" (letter dated 01/03/2024 implementing Monthly Utility Fee), as well as writs of prohibition preventing the Respondent and its agents from implementing or acting on these decisions.

2] On 04/03/2024, the matter was supported for formal notices and interim orders inter parte and the court held there is a prima facie case to be looked into and issued formal notices on the Respondent and also interim orders as prayed for in paragraphs (i), (n) and (o) of the prayers to the petition issued till 07/03/2024 and those interim orders were extended until final determination by order dated 29/04/2024. On interim orders of staying or suspending the operation of these decisions marked "P3," "P5," and "P9," pending final determination, includes preventing any deductions of Monthly Utility Fee (MUF) arrears from sums deposited by CODO dealers for fuel purchases.

3] The backdrop of this case is succinctly as follows; The Petitioner, a limited liability company under the Companies Act, represents CODO (Corporation Owned Dealer Operated) dealers who sell petrol on premises owned by the Respondent, a statutory corporation. Under existing agreements, CODO dealers receives a 2.75% commission, lower than the 3% given to DODO (Dealer Owned Dealer Operated) dealers. The Respondent issued Circular No. 1053 on 5/07/ 2022 (P3), introducing a Monthly Utility Fee (MUF) on CODO dealers, which had

not been broadly applied before. Following discussions with the State Minister, a consensus was reached that MUF would not be applied from January 2023 onward, with CODO commissions adjusted to 2.5%.

4] However, by a letter dated 29/11/2023 (P5), the Respondent sought to reintroduce MUF unilaterally. By letter dated 01/03/2024, members of Petitioners were asked to pay MUF with arrears, failing which the amount would be deducted from their deposits. It should be noted that the Petitioner and several CODO dealers have instituted action in the District Court Cases bearing Nos. DSP 607/2023 and DSP 608/2023 and sought enjoining orders, which were issued at the very outset; however, after an inquiry, enjoining orders were dissolved, and interim injunctions were refused by letter dated 01/03/2024. Being aggrieved by the said order, the leave to appeal application was filed in the Civil Appeal High Court of Colombo. It is noted that after the District Court refused the interim injunction, this case was filed and interim reliefs were obtained, staying the implementation of P3, P5, and P9, 4 days later, on 04/03/2024. That is the brief history of this case.

5] The Petitioner now argues that this move of the Respondent is unlawful, arbitrary, and violates prior agreements, posing financial and operational harm. The learned President's Counsel contended that this is a breach of the legitimate expectations of the Petitioner.

6] In the statement of objections Respondent denies all allegations in the Petitioner's Petition dated 04/03/2024, stating that the claims are baseless and procedurally flawed. The Respondent raised several preliminary objections, including the Petitioner's lack of locus standi, failure to cite necessary parties, and abuse of court process. All these preliminary objections have been dealt with by the order dated 29/04/2024 by my predecessor. However, the Respondent has indicated in the written submission that against the said order that they have special leave to appeal and it has to be supported on 25/10/2025. Thus, this court considers the said objections in this judgment and it can be summarized as below;

A) The Petitioner has no locus standi.

B) Necessary parties have not been added.

C) The Petitioner is guilty of laches.

D) The Petitioner is guilty of suppression and misrepresentation of facts.

E) The Petitioner's application constitutes an abuse of process.

F) The Petitioner's application is futile.

G) Facts are disputed, thus no writ can be taken.

H) The Petitioner has failed to exhaust all available remedies.

I) The Petitioner's conduct is dishonest and reprehensible.

J) The reliefs sought in the application are misconceived in law; and ought to be dismissed *in limine.*

7] The factual matrix of the case is as follows: Respondents are the largest importer, distributor and seller of petroleum and petroleum products in Sri Lanka. The purpose of selling their products in retail, the Respondents has appointed dealers. There are two kinds of dealers;

a] DODO – Dealer Owned and Dealer Operated; dealer owns the premises and equipment and

b] CODO – Corporation Owned and Dealer Operated; corporation owns the fuel station and equipment

8] The present Petitioner represents CODO dealers, the second category and the sales Respondent pays a commission to the CODOs. The commission of the CODO dealers, or the Petitioner, was 2.75% of all sales. That is, if Rs. 100/- worth of petroleum products are sold, the commission is Rs. 2.75. When P3 was brought in 2022 to charge a Monthly Utility Fee of 35% from this commission. However, there was a rebate formula and, that, from the commission, that is

(i) 70% of the first Rs. 500,000/- is free from the Fee. Hence only Rs. 150,000/- is subject to the Fee

(ii) 50% of the next Rs. 500,000/- is free from the Fee. Hence only Rs. 250,000/- is subject to the Fee

(iii) 25% of the next Rs. 500,000/- is free from the Fee. Hence only Rs. 375,000/- is subject to the Fee

(iv) 0% of revenue after Rs. 1.5 million is free from the Fee. Hence, everything above Rs. 1.5 million is subject to the Fee

9] The Respondent states that CODO (Corporation Owned Dealer Operated) dealers operate on CPC-owned or leased premises and are obligated to pay a Monthly Utility Fee (MUF), which has been resisted by many dealers despite formal directives issued since 2013 and reinforced in 2022 and 2023. The Respondent says that there is no existence of any valid agreement to waive the MUF and contends that no such agreement was ratified by the CPC Board.

10] The Respondent's contention is that the Petitioner lacks authority to represent individual dealers and that the dispute is contractual in nature, evidenced by a related case (DSP 608/2023) filed by five dealers in the District Court. In the District Court, although an interim injunction order was initially granted, it was set aside on January 3, 2024, following an inquiry. On the same day, the Respondent issued letter 'P9' demanding MUF payments from CODO dealers. The Respondent argues that continued non-payment has resulted in a financial loss exceeding Rs. 127 million since November 2023, causing a daily loss of Rs. 4.25 million, thereby affecting CPC's financial sustainability and potentially requiring Treasury borrowing or fuel price hikes, negatively impacting the public.

11] Further, the Respondent disputes the Petitioner's claims of hardship, presenting financial data (R5) to show that dealers remain profitable even after paying MUF. The Respondent accuses the Petitioner of suppressing relevant agreements, misrepresenting facts, and lacking evidence to support claims of

dealer losses or procedural unfairness. The Respondent affirms that MUF deductions are lawful, reasonable, and within CPC's statutory authority.

12] On the contrary, the Petitioner says that the Ceylon Petroleum Corporation (CPC), the Respondent, unilaterally moved to impose a 35% Monthly Utility Fee (MUF) on the commissions of Corporation Owned Dealer Operated (CODO) petrol station dealers, which would significantly reduce their earnings. The Petitioner says that MUF was not applied broadly and was only paid by a few dealers voluntarily. Following negotiations between the CPC and the Petroleum Dealers Association, an agreement was reached to reduce dealer commissions from 2.75% to 2.5% in exchange for scrapping the 35% MUF, with any past dues to be waived subject to Cabinet approval. Despite these documented agreements (P3, P4(a), and P4(b)), the CPC sought to reinstate the original 35% MUF, which the Petitioner claims, it constitutes a clear breach of the negotiated understanding.

13] The Petitioner argues that CPC's reversal violates the doctrine of legitimate expectation, which protects individuals from arbitrary policy shifts that disregard prior assurances. Since CPC had formally agreed to revise MUF terms, its attempt to reinstate the original fee structure without justification is alleged to be unlawful, unfair, and outside its legal authority (ultra vires). The Petitioner also disputes CPC's framing of MUF as a "license fee," asserting that this characterization lacks legal validity, particularly when the CPC had previously agreed to drop the 35% MUF. Given the documented mutual agreements, the CPC's actions are challenged as inconsistent with administrative fairness and established procedure. On the footing, the Petitioner seeks writ of certiorari and prohibition.

14] Under the Ceylon Petroleum Corporation Act (No. 28 of 1961), Section 5E, enacts the power of Board of Directors to authorize persons to sell, & c, petroleum of certain classes or descriptions. It says;

> *"5E. Notwithstanding that the* ***exclusive right to sell, supply or distribute petroleum of any class or description is vested in the Corporation*** *by any provision of this Act or any Order made thereunder,*

the Board of Directors may*, from time to time, as respects petroleum of that class or description only grant written authority to any person to sell, supply or distribute petroleum of that class or description* ***subject to such terms and conditions as may be determined by such Board****."*[Emphasis is added]

15] This section 5E subjected to section 5H of the said Act. It says;

"5H. The following provisions shall be applicable in the case of the exercise of the power to grant a written authority conferred on the Minister, any authorized officer or the Board of Directors by any of the sections 5B, ***5E,*** *5F and 5G: -*

(1) Such authority may be granted either of his or its own motion or on application in that behalf made by any person.

(2) The Minister, such officer or such Board may, in his or ***its absolute discretion, decide*** *whether* ***to grant or refuse*** *to grant such authority.*

(3) The Minister, such officer or such Board may, in his ***or its absolute discretion, decide the terms and conditions*** *subject to which such authority should be granted.*

(4) The Minister, such officer or such Board may, in his ***or its absolute discretion, decide at any time to cancel*** *such authority.*

(5) ***The terms or conditions of such authority may be amended, varied or cancelled either of his or its own motion*** *or on application in that behalf made by the person to whom such authority is granted.*

(6) The Minister, such officer or such Board may, in his or ***its absolute discretion, decide whether or not to amend, vary or cancel*** *any term or condition of such authority.*

(7) Any decision made by the Minister, such office or such Board under the preceding ***provisions of this section shall be final and conclusive, and shall not be called in question in any court whether by way of writ or otherwise****."* [Emphasis is added]

16] As seen by section 5H (7) the jurisdiction of this court categorically ousted. However, in ***J. K. Anura Banda Piyarathna vs Minister of Lands and Land Development and others***, CA/WRIT/344/2012, Decided on: 20.02.2020, Mahinda Samayawardhena, J cited with approval in relation to absolute discretion as follows;

> *"Wade observes (Administrative Law, 5th ed., pp. 353-354) "The common theme of all the passages quoted is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely—that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms. The real question is whether the discretion is wide or narrow, and where the legal line is to be drawn. For this purpose, everything depends upon the true intent and meaning of the empowering Act."*

17] Further, in ***GUNATILEKA v. WEERASENA*** [2000] 2 Sri LR. 01, DE SILVA, J. held that;

(1) *"In Modern Administrative Law the concept of absolute discretion is unacceptable. Arbitrary power and unfettered discretion are what courts refuse to countenance.*
(2) *(2) As the law developed certiorari and prohibition have become general remedies which may be gran ted in respect of any exercise of discretionary power."*

18] In ***WICKREMATUNGA v. ANURUDDHA RATWATTE AND OTHERS***, [1998]1 *Sri LR, 201, it was held that;*

> *"The power to terminate the agreement without notice and without assigning any reason did not mean that the terms of the agreement permitted the Corporation to terminate the agreement merely because it was minded to do*

so. A public corporation must act in good faith and act reasonably. The concept of unfettered discretion is inappropriate to a public authority."

19] In the light of section 5H (7), it is a clear ouster clause by a statute.[1] One can say that Article 140 of the Constitution, the writ jurisdiction cannot be taken by a statute. [2]Article 140 says;

> *"140.* ***Subject to the provisions of the Constitution****,* ***the Court of Appeal shall have full power and authority to*** *inspect and examine the records of any Court of First Instance or tribunal or other institution and* ***grant and issue, according to law****,* ***orders in the nature of writs*** *of certiorari, prohibition, procedendo, mandamus and quo warranto* ***against*** *the judge of any Court of First Instance or tribunal or* ***other institution*** *or any other person"* [Emphasis is added]

20] Thus, it is crystal clear that the power of the Court of Appeal in relation to writ jurisdiction is only subject to provisions of the Constitution; it cannot be taken away by a statute. This position was clearly addressed by Her Ladyship Shiranee Tilakawardane J. (P/CA) in ***Katugampola vs. Commissioner General of Excise and others*** [2003] 3 Sri. L.R. 207 (page 210) where the Court has held;

> *"Therefore****, the ouster clauses contained in ordinary legislation would not effectively restrict or preclude the jurisdiction granted by***

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[1] Denning LJ. in the case of ***R vs. Medical Appeal Tribunal ex. p. Gilmore*** [1957] 1 QB 574 (at p. 583) has declared that; *"I find it very well settled that the remedy by certiorari is never to be taken away by any statute except by the most clear and explicit words".*

[2] Section 22 of the Interpretation Ordinance No 21 of 1901 as amended reads as follows: *" Where there appears in any enactment, whether passed or made before or after the commencement of this Ordinance, the expression "shall not be called in question in any court" or any other expression of similar import whether or not accompanied by the words "whether by way of writ or otherwise" in relation to any order, decision, determination, direction or finding which any person, authority or tribunal is empowered to make or issue under such enactment, no court shall, in any proceedings and upon any ground whatsoever, have jurisdiction to pronounce upon the validity or legality of such order, decision, determination, direction or finding, made or issued in the exercise or the apparent exercise of the power conferred on such person, authority or tribunal."*

Article 140 of the Constitution. *Nevertheless, the restriction contained in Article 55 (5) and the Amended Article 61 A as these are ouster clauses stipulated in the Constitution itself,* ***the powers of this Court would be restricted by these provisions contained in the Constitution****. It was held in the case of Atapattu v People's Bank 1997 1 Sri L.R. 208, Bandaranayake vs. Weeraratne 1981 1 Sri. L.R. 10 at 16, that the ouster clauses contained in the Constitution would bar jurisdiction that has been granted within the Constitution and would therefore such ouster clause adverted to above would be a bar to the entertaining of writ applications to invoke the writ jurisdiction by this Court."* [Emphasis is added]

21] Thus, the contention of the Respondent that the unfettered discretion under section 5 of the Ceylon Petroleum Corporation Act (No. 28 of 1961) cannot be taken as a sound argument and it is hereby suppressed.

22] I now consider the issue of *Locus standi*. In terms of standing (locus standi), the Petitioner has mentioned that they have a direct and sufficient interest in the matter, as the agreements not to impose the MUF were made directly with it. The Respondent's own conduct, which includes convening meetings with the Petitioner and negotiating terms, validates the Petitioner's representative role.

23] In the issue of locus standi under writ jurisdiction, In ***Premadasa v. Wijeyewardena and Others***, [1991]1 S.L.R. 333, His Lordship Tambiah, C.J. held;

"The law as to locus standi to apply for certiorari may be stated as follows. The writ can be applied for by an aggrieved party who has a grievance or by a member of the public. If the applicant is a member of the public, he must have sufficient interest to make the application"

24] In ***Wanasinghe and others (Citizens Movement for Good Governance) v. University of Colombo*** [2006] 3 SLR 322 at 327- 329 also His Lordship Sriskandarajah J. had the same view.

"Who can file a writ application? The short answer is—any "person" (as defined in section 2(s) of the Interpretation Ordinance) who has "sufficient interest" as

opposed to the outdated requirement of "personal interest" because of the element of "public interest". This includes a Trade Union. High flown technical objections regarding locus standi have no place in the modern administrative law."

25] This view was adopted in ***Wijesiri v. Siriwardene*** [1982] 1 Sri LR 171, ***Perera v. Central Freight Bureau of Sri Lanka*** [2006] 1 Sri LR 83, ***Jathika Sevaka Sangamaya v. Sri Lanka Ports Authority*** [2003] 3 Sri LR 146, ***Premadasa v. Wijewardena*** *(Supra)-[*1991] 1 Sri LR 333, ***Vasudeva Nanayakkara v. Governor, Central Bank of Sri Lanka*** [2009] BLR 41.

26] Further, in ***Shell Gas v. Consumer Affairs Authority*** CAM 22.08.2014, Marsoof J. (P/CA) observed;

> *"Courts in Sri Lanka as well as in other jurisdictions have liberally interpreted rules of standing in regard to matters of vital concern to society....Time and time again, our Courts have repeated that the fact that the irregularity or the grievance for which redress is sought is shared by a large number of people or society as a whole would not prevent one of the many affected persons from seeking relief from the court. There can be no doubt that a consumer such as the intervenient-petitioner will have locus standi to challenge an order or action of a statutory body such as the Consumer Affairs Authority in an appropriate case…*
>
> *An association or group that seeks to represent some or all of its members were also said to have standing in relation to the matters affecting the interest of their members; Consumers Association of Lanka v. Telecommunications Regulatory Commission of Sri Lanka and others [2006] 1 Sri LR 174. In Jayathilaka v. Jeevan Kumarathunga and Others CA 1312/2004-BASL News August 2004 a person who has a long standing association and interest in a particular field such as sports was given standing to challenge an appointment of the Chef De Mission for Olympic Games. A movement called Green Movement of Sri Lanka was given standing in C.A. (writ) Application No 2047/2003 C.A. Minutes 06.06.2006 where the Green Movement of Sri Lanka having the objects of preserving the environment and natural resources of Sri Lanka, instituted proceedings*

on the complaint of the villagers who are directly affected but do not have sufficient resources to present their grievance before a court of law…."

26] Moreover, in ***Wijesiri v. Siriwardene*** [1982] 1 Sri LR 171, Wimalaratne J. in the Supreme Court stated;

"In this connection it would be relevant to refer to the views of an eminent jurist on the question of locus standi. Soon after the decision of the Privy Council in Durayappah Vs. Fernando (1967) 3 WLR 289, in an Article entitled Unlawful Administrative Action in (1967) 83 L.O.R. 499, H. W. R. Wade expressed the view that one of the merits of Certiorari is that it is not subject to narrow rules about Locus standi, but is available even to strangers, as the Courts have often held, because of the element of public interest."

27] Therefore, the contention of the Respondent that the Petitioner has no locus standi to maintain this writ application, cannot be taken as a valid argument. I therefore suppress the said contention.

28] With regard to suppression and misrepresentation of facts Salam J has decided in ***Fonseka v LT. General Jagath Jayasuriya and Five Others,*** [2011] 2 SLR Page 372**,** that;

"Material facts are those which are material for the Judge to know in dealing with the application as made, materiality is to be decided by Court and not by the assessment of the applicant or his legal advisers".

29] The Respondent says that the Petitioner willfully suppressed and misrepresented in paragraph 33 of the Petition that P5 was not issued pursuant to a Board decision where the objection filed in the District Court Case, said decision was tendered as V10, thus, willfully and knowingly suppressed the facts. It is seen that the Petitioner had initiated proceedings in the District Court, after issuing P5 and had taken ex parte enjoining orders. Although, the Petitioner had merely mentioned about the District Court cases, it is seen, as the Petitioner seeks to rescind P5 by a writ, it is a material fact which ought to have been disclosed. In ***Namunukula Plantations Ltd v Minister of Lands and others*** (SCIAp1/46/2008, decided on 13.03.2012), Marsoof J held:

"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." "If any party invoicing 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 is therefore my considered view that this Court need not, and should not, answer any of the questions on which special leave to appeal was granted, as the letter dated 30.11.2000, which is reproduced in full in this judgement, clearly demonstrates that the Appellant has been guilty of deceptive conduct, and has not only suppressed, but also misrepresented material facts before the Court of Appeal as well as this court."

30] Thus, the conduct and dealings of the Petitioner cannot be acceptable. Moreover, after rejecting the interim injunction, the Petitioner has filed a leave to appeal application. It is seen that a similar relief had been prayed for in this application, and the Respondent argues that since the contractual relationship, the Petitioner instituted action before the District Court, on failing this writ application, it has been filed.

31] I now examine this contention. When I examine P2, that is the Dealers Agreement for Corporation Owned Category Dealers (COCD). In that clause B 03 C is as follows;

"The dealer will pay to the Corporation for the use of the said outfit ***a licence fee and equipment*** *rental as determined by the Corporation from time to time"* [Emphasis is added]

32] The above clause directly applies to the impugned payment of MUF and the dealers are liable to pay licence fee and equipment fee as well. Thus, an agreement drafted under the authority of section 5E of the Ceylon Petroleum Corporation Act (No. 28 of 1961) cannot be treated as ultra vires. Further, when, I peruse the schedule, the dealer has signed and agreed as *"I/we do hereby agree to abide by all the conditions stipulated in the aforesaid agreement"*. Thus, it is clear that the agreement is purely a contractual one of a commercial nature.

33] In the case of ***Jayaweera v. Wijeratne***, [1985] 2 SLR at 413 it was held that;

> *"Where the relationship between the parties is purely contractual one of a commercial nature, neither certiorari nor mandamus will lie to remedy grievances arising from an alleged breach of contract or failure to observe the principles of natural justice even if one of the parties is a public authority. "*

34] Further, in the case of ***Gawarammana v. The Tea Research Board and others***, [2003] 3 SLR 120 His Lordship Sripavan J (as he then was) held;

> *"that the powers derived from contracts are matter of private law. The fact that one of the parties to the contract is a public authority is not relevant since the decision sought to be quashed by way of certiorari is itself was not made in the exercise of any statutory power."*

35] In ***Galle Flour Milling (Pvt) Limited vs. Board of Investment of Sri Lanka and another*** (2002) BLR 10, the Court held that;

> *"An analysis of the relationship that existed between the parties reveals that as it was purely a contractual one of commercial nature, neither certiorari nor mandamus will lie to remedy the dispute over the rights of the parties. The purported breach of such rights and the grievances between the parties, arise entirely from a breach of contract, even if one of the parties was a statutory or public authority."*

36] Thus, I hold that there cannot be a writ which lies against on P3, P5 and P9 as the agreement is based on private contract.

37] The Petitioner has mentioned that on P4(a), they have legitimate expectation to quash P3, P5 and P9. P4(a) is the minutes of the MUF Discussion held on 22/12/2022. Participants of CPD (the Respondent) and PDA, the Petitioner, were present at the meeting. The Petitioner says that the meeting created a legitimate expectation.

38] In "Administrative Law" by HWR Wade and C.F. Forsyth (11th Edition) at pages 450- 452, the authors observe the principles related to legitimate expectation as follows;

> *"The phrase legitimate expectation (which is much in vogue) must not be allowed to collapse into an inchoate justification for judicial intervention. (page 450) As Lord Bridge in 1986 set out clearly there are two ways in which legitimate expectations may be created. He said in Re. Westminster City Council [1986] AC 668 at 689, the courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation. (page 451) It is not enough that an expectation should exist: it must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy or law. A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. Many claimants fail at this hurdle after close analysis of the assurance. The test is how on a fair reading of the promise it would have been reasonably understood by those to whom it was made." (page 452)*

39] The Petitioner relies on heavily the principles enunciated in ***S.F. Zamrath vs Sri Lanka Medical Council and others***, No: SC/FR/119/2019, Decided on: 23/07/2019. In that His Lordship L.T.B Dehideniya J considered the principle in depth, as follows;

"The doctrine of legitimate expectation is basically aimed at the prevention of administrative authorities from abusing their discretionary powers against the legitimate expectations of individuals, which have been engineered by the prior conduct of the authorities. The Petitioner has studied in a university which has been duly recognized by the 1st Respondent. It is evident that, the 1st Respondent's act of recognizing the university has engineered a legitimate expectation of the Petitioner. The legitimate expectation of a person ensures that, the administrative authorities are bound by their undertakings and assurances unless there are compelling reasons to change the policy subsequently. It further ensures legal certainty which is imperative as the people ought to plan their lives, secure in the knowledge of the consequences of their actions. The perception of legal certainty deserves protection, as a basic tenet of the rule of law which this court attempts to uphold as the apex court of the country. The public perception of legal certainty becomes negative when the authorities by their own undertakings and assurances have generated legitimate expectations of people and subsequently by their own conduct, infringe the so generated expectations.

Lord Denning has stated that, (in "Recent Development in the Doctrine of consideration'') 'A man should keep his words. All the more so when promise is not a bare promise but is made with the intention that the other party should act upon it'. The principle of legitimate expectation is connected with an administrative authority and an individual. It emerges in an instance where an administrative authority affects a person by depriving him of some benefit or an advantage which he had been in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue. Thus as an essence, administrative authority must respect the expectations. There are essential ingredients of legitimate expectation. Some are:

> *a) The doctrine imposes a duty on the administrative body to afford an opportunity of hearing to the affected party, before acting contrary to the latter's legitimate expectation.*

b) The doctrine extends the protection of natural justice or fairness to the exercise of non-statutory administrative powers where the interest affected is only an expectation, a privilege or a benefit.

c) The doctrine applies to make a public authority's decision making process fair.

d) A person may derive the legitimate expectation of receiving a benefit or privilege as a matter of public law even where that person has no legal right to it.

e) An individual can claim a benefit or privilege under the doctrine of legitimate expectation only when such expectation is reasonable.

f) The doctrine extends to the exercise of non-statutory powers.

g) The doctrine of legitimate expectation would arise from an express promise or existence of a regular practice."

40] Further, in ***Wickremaratne v. Jayarathne*** [2001] 3 Sri L R 161, Justice Gunawardena held that;

"The doctrine of legitimate expectation is not limited to cases involving a legitimate expectation of a hearing before some right or expectation was affected, but is also extended to situations even where no right to be heard was available or existed but fairness required a public body or official to act in compliance with its public undertakings and assurances. Simon Brown LJ explained this aspect in R. v. Devon Country Council, ex parts Baker and another in which the concept of legitimate expectation was used to refer to the fair procedure itself i.e. that the applicant claims to have a legitimate expectation that public authority will act fairly towards him. It is not procedurally fair for the State to have promised the petitioner an extent of land 2RR 21 PP in extent upon his surrendering the balance land and then proceed to acquire the whole of the land without the petitioner being given any opportunity to make representations…

As the apex court of the country, this court encourages the flexibility and adaptability of the administrative authorities in making policies and taking decisions, but still, insists on the fact that such conduct should not be used unfair and arbitrary…

The main function of this court in this type of case is to strike a balance between ensuring an administrative authority's ability to change its policies when required, and make sure that in doing so they do not defeat the legitimate expectations of individuals by acting unfairly and arbitrarily…

The legitimate or reasonable expectation arises from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. This court decides that, the expectation which is defined in the domain of this doctrine is not merely an anticipation. It is not just a wish, desire, hope, a claim or any kind of a demand. The legitimacy of an expectation can be inferred, if it is founded on the sanction of a law or custom or assurance or an established procedure by a public authority…"

41] In the instant case, the meeting was presided by a State Minister, not the Cabinet Minister to the pertinent subject. This meeting was held on 22/12/2022 and it has bearing on the P49b), 38/1279 of 21/06/2023 Board Paper. In that the Board mentioned subsequent to P4(a) meeting, some members of the Petitioners have instituted legal proceedings in the Commercial High Court and the District Court. Thus, it is not the respondent, the Petitioner disobeyed the settlement. Once the conditions of the settlement are denounced by the Petitioner, the Petitioner cannot have any legitimate expectation on the settlement once he failed in the law suit. When applying the above stated principles to the instant case though an assurance was given by the Respondent, it is to be subjected to the Cabinet Approval and the Cabinet Minister has not given any undertaking on approval. Thus, this court is of the view on this footing, since the Petitioner has instituted legal proceedings against the Respondent on a contract in the Commercial High Court and District Court, and the P4(a) is merely a meeting, there is no chance to create legitimate expectation on the said P4(a) meeting. If the said P4(a) undertaking was breached by the Respondent, it

is dubious why a writ of Mandamus was filed instead of filing civil suits. In that sense, the Petitioner is too late to file this application.

42] On the other hand, if the Petitioner relies on P4(a), why the specific performance has not been pleaded in the civil suits, instead of praying for invalidation of P3 and P5. This shows that facts are disputed by the parties and amongst the dealers, members of the Petitioners.

43] In the case of ***Thajudeen vs Sri Lanka Tea Board and another*** [1981] 2 SLR 471 Ranasinghe J. held;

> *"that the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of: Ghosh v. Damodar Valley Corporation, Porraju v. General Manager B. N. Rly."*

44] In the case of ***W.M.Karunawathie and others v A.H.Pemawathie and others*** (CA (Writ) 452/2008) Anil Gooneratne J. held that;

> *"When facts are disputed, court should be cautious and refrain from interfering by way of granting a prerogative writ. This is a discretionary remedy of court. Given the powers of such a remedy, the Common Law surrounding this remedy requires multiple conditions that must be met prior to issuance of a writ by court"*

45] I note the notion that Lord Diplock held in ***Council of Civil Service Unions vs Minister for the Civil Service*** 1985 AC 374. He notes;

> *"Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first*

ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.

46] I cannot see any illegality, irrationality or procedural impropriety in the decision sought to be quashed.

47] This court further notes where His Lordship Marsoof J held in ***Ratnasiri and others v. Ellawala and others*** (2004) SLR 180. His Lordship held;

"This court is mindful of the fact that the prerogative remedies it is empowered to grant in these proceedings are not available as of right. Court has a discretion in regard to the grant of relief in the exercise of its supervisory jurisdiction"

48] In the above circumstances, we see no merit in this application. Thus, the application for writ of certiorari and prohibition is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL