

**THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

In the matter of an application for Special Leave to Appeal under and in terms of Article 128 of the Constitution.

Kuruwitage Don Marlin Minura
Siriwardena,
No. 50 1/1, Ambatale,
Mulleriyawa, New Town.

Petitioner

Case No: SC/SPL/LA 266/2023
CA (WRIT) 64/2021

-Vs-

1. Ceylon Petroleum Corporation
No 609, Dr. Danister de Silva
Mawatha,
Colombo 09
2. W.W. D. Sumith Wijesinghe,
Chairman and Board Member,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
3. Buddhika Ruwan Madihahewa,
Managing Director and Board Member,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
4. R.M.D.K. Rathnayake
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
5. Tharindu Hashan Eknathgedara
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.

6. Chaminda Hettiarachchi
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
7. Buddhika Iddamalgoda
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
8. Thilanga Nadeera Polwatta
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
9. Hon. Udaya Prabath Gammanpila,
Minister of Energy,
Minister's Office, Ministry of Energy.
No. 80, Sir Ernest de Silva Mawatha,
Colombo 07.
10. B.S. Cooray,
No. 1/215, Udumulla,
Mulleriyawa.

Respondents

And now between

B.S. Cooray
No. 1/215, Udumulla, Mulleriyawa.

10th Respondent-Petitioner

Vs.

Kuruwitage Don Marlin Minura
Siriwardena
No. 50 1/1, Ambatale, Mulleriyawa
New Town

Petitioner-Respondent

1. Ceylon Petroleum Corporation
No 609, Dr. Danister de Silva
Mawatha,
Colombo 09
2. W.W. D. Sumith Wijesinghe,
Chairman and Board Member,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
- 2A. Mr. Mohamed Uvais Mohamed,
Chairman and Board Member,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
- 2B. Mr. Saliya Wickramasuriya
Chairman and Board Member,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
3. Buddhika Ruwan Madihahewa,
Managing Director and Board Member,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
- 3A. Colonel (Retired) S.R.P.Ratnayake,
Managing Director and Board Member,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.
4. R.M.D.K. Rathnayake
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.

5. Tharindu Hashan Eknathgedara
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.

5A. R. Manoj Gamage
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.

6. Chaminda Hettiarachchi
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.

6A. Nilanka R. Jayawardena
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.

7. Buddhika Iddamalgoda
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.

7A. W.M. Gihan Rasantha
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.

8. Thilanga Nadeera Polwatta
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.

8A. O. Sudeep Rukmal Rathnaweera
Director,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.

9. Hon. Udaya Prabath Gammanpila,
Minister of Energy,
Minister's Office, Ministry of Energy.
No. 80, Sir Ernest de Silva Mawatha,
Colombo 07.

9A. Hon. Kanchana Wijesekara,
Minister of Energy,
Minister's Office, Ministry of Energy.
No. 80, Sir Ernest de Silva Mawatha,
Colombo 07.

10. K.K.S.A.Perera
Observer,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva
Mawatha,
Colombo 09.

Respondent-Respondents

Before : **Murdu N.B. Fernando, PC, CJ.**
Yasantha Kodagoda, PC, J and
Arjuna Obeyesekere J.

Counsel : Saliya Peiris, PC for the 10th Respondent - Petitioner.

Shanaka Amarasinghe for the Petitioner-Respondent.

Nayomi Kahawita, SSC for the 1st, 2B and 3A Respondents.

Supported on : 27.02.2024 and 03.04.2024

Decided on : 07.02.2025

Murdu N.B. Fernando, PC., CJ.

This Order pertains to the application made by 10th Respondent-Petitioner to withdraw the Petition preferred before this Court for granting of Special Leave to Appeal, dated 15.09.2023 against the judgement of the Court of Appeal dated 05.09.2023

Timeline and sequence of events

01. On 15th September, 2023 the 10th Respondent – Petitioner (“the Petitioner”) filed an application for granting of Special Leave against a judgement of the Court of Appeal dated 5th September, 2023.
02. The impugned judgement was in relation to a writ application filed by the Petitioner-Respondent (“the Respondent”) challenging the issuance of a new Dealership Agreement to the Petitioner, by the Ceylon Petroleum Corporation, the 1st Respondent-Respondent (“the CPC”) on two grounds, violation of the requirements in existence regarding minimum distance and the approval granted by the 2nd to the 8th Respondent-Respondents (the Board of Directors of the CPC) was for collateral and extraneous considerations.
03. The Court of Appeal quashed by way of a Writ of Certiorari, the authority granted to the Petitioner to establish, effect and operate a gas / filling station at the impugned premises and granted prayer (b) of the Petition, being satisfied that the impugned decision to issue the license was tainted with bias and the CPC had failed to consider relevant factors in exercising its discretion.
04. The Leave to Appeal Application was listed for Support on 2nd October, 2023. On the said date, the Respondent was absent and unrepresented and the Court directed the Petitioner to issue notice on the Respondent and the date for Support was re-fixed for 21st November, 2023.
05. On 21st November, 2023 when the matter was taken up for Support of the Special Leave to Appeal Application, the learned Counsel for the Petitioner and the learned Senior State Counsel appearing on behalf of the 1st to 9th Respondents, (the CPC, its Directors and the Minister of Power and Energy) informed Court that the Petitioner has filed a fresh application with the CPC to obtain a dealership and that the said application was under consideration by the Board of Directors of the CPC and moved that this matter be mentioned. The Court then granted 9th March, 2024 as a mention date.
06. Prior to the said date, the State Attorney on behalf of said Respondent-Respondents, filed a motion dated 06th February, 2024 annexing three documents and moved that it be accepted and filed of record. The said documents were as follows;
 - (i) A Dealership Agreement executed between the CPC and the Petitioner dated 12th December, 2023;

- (ii) A letter of authority given to the Petitioner to sell/supply and distribute petrol and diesel, lubricants and grease with effect from 15th November 2023; and
- (iii) A letter dated 12th December, 2023 issued by the 3A Respondent-Respondent, (“the Managing Director of the CPC”) to the Petitioner informing the Petitioner to commence business operations forthwith.

07. On 12th February, 2024 the Petitioner filed a motion, seeking permission of Court to withdraw the Special Leave to Appeal Application, upon the basis that the Petitioner is reliably informed that the Board of Directors of the CPC on 15th November, 2023 considered the fresh application the Petitioner made seeking a dealership agreement and granted approval for a new dealership. Further the Petitioner stated, that in the impugned judgement the learned judge of the Court of Appeal held that the judgment should not be an impediment for the Petitioner to prefer a fresh application to the CPC seeking a dealership.

08. On 27th February, 2024 the application of the Petitioner for withdrawal was supported before Court. The Counsel for the Respondent objected to the withdrawal of the application on the basis that the relief granted by the Court of Appeal to the Respondent would become nugatory in view of the present circumstances.

09. The Court thus, directed the learned SSC to file an affidavit on or before 19th March, 2024 along with supporting documents to justify the present status and the change of circumstances. This matter was listed to be mentioned on 03rd April, 2024.

10. On 21st March, 2024 the Attorney-at-Law for the 1st, 2nd and 3A Respondents filed an affidavit of the Managing Director of the CPC [3A Respondent] annexing documents marked X1 to X7. The said documents were as follows;

X1 - An internal communique of the Manager, Sales to the Managing Director of CPC dated 13-09-2023, informing that at a meeting held on 12-09-2023 presided over by the Minister of Power and Energy, [9A Respondent] instructions were given that the requirement of a minimum distance between filling stations should be disregarded and if such a requirement had been given it should forthwith be removed;

X2 - The fresh application tendered by the Petitioner dated 04-10-2023;

X3 -A report tendered to the Manager, Sales by the Acting Regional Manager (West) dated 16-10-2023 recommending the fresh application;

X5 - The board paper dated 10-11-2023 seeking approval to appoint the Petitioner as a new dealer;

X6 -The board approval dated 15-11-2023 relating to the application of the Petitioner dated 04-10-2023 and direction to withdraw immediately the circular pertaining to guidelines on minimum distance; and

X7 – Letter issued by the 3A Respondent dated 12-12-2023 granting the dealership to the Petitioner with immediate effect.

11. On 27th March, 2024 the Respondent by way of an affidavit averred;

- that the arbitrary instructions given by the 9A Respondent-Respondent (“the Minister”) at the meeting held on 12-09-2023 (within 4 working days after the delivery of the Court of Appeal judgement) was with wanton disregard to the substance and spirit of the judgement of the Court of Appeal;
- the CPC has the authority to remove the minimum distance requirement, but such discretion must be expressed lawfully and in deference to procedural propriety;
- hence the instructions issued by the Minister in an arbitrary, capricious and egregious manner as reflected in X1, tantamount to contempt of the judgement of the Court of Appeal;
- even if a policy decision was made for change of rules, the CPC and the Minister ought to have adopted a process, wherein a rational and a data driven requirement was properly maintained and the failure to follow such process indicate the *mala fide* intent to subvert the operation of the judgement of the Court of Appeal;
- that ‘adherence to judicial directives’ or ‘bringing the authority of a court into disrespect or disregard’ and ‘causing grave prejudice to the judicial process’ amounts to contempt of the court as laid down in the Contempt of Court Act No 8 of 2024; and
- that granting the Petitioner relief even before the Special Leave to Appeal Application was heard and determined with no *interpartes* settlement agreement amounts to usurpation of the powers of this Court and a *prima-facie* occurrence of a contempt of the court, and therefore this Court should inquire into such matter.

12. On 3rd April, 2024 Court heard submissions of the Petitioner and the Respondents and reserved Order.

13. Further, the Court directed the learned SSC who appeared for all the Respondent-Respondents on 3rd April, 2024 to file comprehensive affidavit evidence laying down the sequence of events from the date of the impugned judgment to the issuance of the license to the Petitioner.

14. Consequent to the said direction of this Court, an affidavit dated 26-04-2024 was filed by the Minister affirming that at a meeting held on 12-09-2023 instructions were given by him to formulate a common criteria for new fuel stations to be established rather than the distance between two fuel stations and that statutorily he was empowered to issue such directions and instructions to the CPC and that he had not conducted himself in wanton disregard of the judgement of the Court of Appeal and the proceedings before this Court.

15. The Managing Director of the CPC also filed a further affidavit dated 29-04-2024 and averred that he had not conducted himself in wanton disregard of the judgement and

annexed documents marked X1 to X11 to justify his stance. Referred below are some of the documents annexed to the affidavit of the 3A Respondent.

X3 –A communique of the Attorney General to the CPC dated 08-09-2023, referring to the judgement of the Court of Appeal, indicating that it is not a fit and proper case to file Special Leave to Appeal on behalf of the CPC;

X4 –Letter dated 13-09-2023 of the Manager, Sales to Chief Legal Officer documenting the instructions received from the Minister relating to the filling station in issue; and

X10–Letter dated 08-12-2023 of the Managing Director, CPC addressed to the Secretary, Ministry of Power and Energy indicating that approval was granted to the Petitioner to commence business operations with effect from 12-12-2023.

Judgement of the Court of Appeal

The learned judges of the Court of Appeal, whilst accepting that there are no rules and regulations governing issuance of license to operate filling stations, considered the letter dated 05th February, 2015 issued by the Chairman/ Managing Director of the CPC and the directions of even date issued by the Manager, Sales and came to the finding, that the said criteria and the grounds referred to therein are factors that should be considered in arriving at a correct decision, to grant approval for the commencement of a new filling station. The ‘distance factor’ or minimum distance between two filling stations was one such factor that should be considered, the Court held, and went onto observe as follows;

“What is important is to follow the due procedure and justify the decision by giving sufficient reasons, even to disregard one of the factors”.

“The impugned decision is tainted with bias and since the Respondents have failed to take into consideration the relevant factors, I am of the view that the Respondents have failed to duly exercise their discretion” (Respondents herein are the CPC, its Directors and the Minister)

Thus, the Court of Appeal for reasons morefully discussed in the judgement quashed by way of a Writ of Certiorari the authority granted to the Petitioner to set-up a new filling station upon the basis that due procedure has not been followed and the impugned decision is tainted with bias.

Supreme Court Rules

Rule 15 of the Supreme Court Rules 1990 dated 25th September 1990 reads as follows:

*“The Petitioner in an application for special leave to appeal may apply, **at any time, to withdraw such application**, having served notice of such application to withdraw such application, having served notice of such application to withdraw on every respondent who has entered an appearance at the Registry; and **the Court may, after making any necessary inquiry into the matter, permit the withdrawal of such application on such terms as to cost and otherwise as it thinks fit.**”* (emphasis added)

Order of Court

We have considered the sequence of events that transpired consequent to the issuance of the Writ of Certiorari by the Court of Appeal and note with disdain, the steps taken by the Respondents namely, the Ceylon Petroleum Corporation, the Directors and the Minister to enter into a fresh Dealership Agreement with the Petitioner, prior to even the Special Leave to Appeal Application filed by the Petitioner was supported for granting of leave before the Supreme Court.

We are concerned with the speed at which the events have unfolded to grant a new dealership to the Petitioner in the backdrop of invoking the jurisdiction of this Court by the Petitioner.

We are mindful that when the approval was granted by the Board of Directors of the CPC on 15th November, 2023 that the guidelines pertaining to ‘minimum distance’ was still in operation. (vide **X6**, annexed to the affidavit of the Managing Director the 3A Respondent dated 21-03-2024) and that the CPC granted the go-ahead for the Petitioner’s fresh application, within one month from the date of the Court of Appeal judgement, when the Petitioner had filed an application for Special Leave to Appeal against the very same judgement.

We also note that the CPC did not file a Special Leave to Appeal Application and the Hon. Attorney General, being the Counsel for the CPC has advised the CPC that this is not a fit and proper case to file appeal papers on behalf of the CPC.

This Court further observes, that though by letter dated 08-12-2023 the Secretary, Ministry of Power and Energy had been informed that the Petitioner was granted approval to commence business operations on 12-12-2023, (vide **X10**, annexed to 3A Respondent’s further affidavit dated 29-04-2024), the Board approval did not refer to a date to commence business.

Moreover, when the Petitioner filed before this Court a motion, dated 12-02-2024 to withdraw the Special Leave to Appeal application, the Petitioner failed to appraise this Court and/or deliberality withheld from Court, that a new Dealership Agreement had already been signed between the Petitioner and the CPC on 12-12-2023 and that the Petitioner had commenced business operations. This amply demonstrate the Petitioner’s conduct and the willingness and the eagerness of the CPC to grant the license to the Petitioner at its earliest.

This Court is very much mindful of the “strictures passed by the judges of the Court of Appeal” in relation to the decision taken by the Respondents the CPC, its Directors and the Minister to grant a dealership to the present Petitioner, B.S. Coorey and the issuance of the license being decisions tainted with bias and secondly, the failure of the Respondents to consider relevant factors at the first instance, in the issuance of a new Dealership to the Petitioners which were the key arears challenged and adjudicated before the Court of Appeal in the Writ application where writ of certiorari was issued.

This Court abhors the above conduct of the Petitioner and the Respondents, the CPC, its Directors and the Minister.

This Court firmly believes and advocates, that adherence to judicial orders and directives is a basic norm in a just society. It is the foundation of the Rule of Law. The conduct

of the Respondents referred to above had caused grave prejudice to the judicial process and the Rule of Law.

Subject to the observations made in this Order,

- (i) We permit the Petitioner to withdraw the Special Leave to Appeal Application with costs fixed at Rs. Seven Hundred and Fifty Thousand (Rs. 750,000.00) to be paid by the Petitioner as state costs. The costs to be paid to the Registrar of this Court forthwith.
- (ii) We direct the Hon. Attorney General to take appropriate action against all parties in respect of the non-adherence to the due process of the law. We further direct the Hon. Attorney General to take necessary follow-up action with the relevant state institutions where required.
- (iii) The Petitioner-Respondent is at liberty to take appropriate action it deems necessary. This Order will not be a bar to the Petitioner-Respondent to resort to the due process of Law.

For reason morefully stated herein, the 10th Respondent-Petitioner's Application for withdrawal of the Special Leave to Appeal is allowed, subject to costs fixed at Rs. Seven Hundred and Fifty Thousand (Rs. 750,000.00) payable by the 10th Respondent-Petitioner to the State forthwith.

Chief Justice

Yasantha Kodagoda, PC, J.

I agree

Judge of the Supreme Court

Arjuna Obeyesekere J.

I agree

Judge of the Supreme Court