
**LANKA MARINE SERVICES (PVT) LTD
VS
SRI LANKA PORTS AUTHORITY AND OTHERS**

COURT OF APPEAL.
SRIPAVAN, J. AND
BASNAYAKE, J.
CA 829/2005.
JULY 6, 24, 27, 2005.

Petroleum Products (Special Provisions) Act, No. 33 of 2002, section 5 - Common User Facility (C.U.F.) agreement - Rights of parties in the CUF agreement - could it take away the statutory powers of the Minister?

The petitioner sought to quash the licenses issued by the Minister of Power and Energy the 6th Respondent under the provisions of Act, No. 33 of 2002 to the 4th and 5th respondents and further sought an interim order preventing the 1st respondent Sri Lanka Ports Authority from permitting the 4th and 5th respondents from landing/transporting bunkers/marine fuel within the port of Colombo without using the common user facility (CUF).

It was contended that the CUF agreement was entered into on 20.08.2002 among the petitioner, 4th respondent, 3rd respondent Ceylon Petroleum Corporation and the Secretary to the Treasury and that, the Government has in terms of the CUF agreement covenanted, promised and undertaken that all bunkers/marine fuel handled and transported within the Port of Colombo should be handled and transported using the CUF and that, the 4th and 5th respondents were not parties to the CUF agreement. It was contended that the impugned licences are invalid *ex- facie*, contrary to the terms and conditions of the CUF agreement and be quashed.

HELD -

- (1) The impugned licences were issued in terms of the provisions contained in section 5 of Act, No. 33 of 2002, passed by Parliament on 17.12.2002.
- (2) The Act was passed after the CUF agreement was entered into by the parties.
- (3) The powers of the 6th respondent Minister as contained in the Act cannot be taken away by the CUF agreement.
- (4) The statute being superior reflects the will of the legislature and takes priority over the CUF agreement.

- (5) Certiorari does not lie to remedy grievances from an alleged breach of contract.

APPLICATION for a writ of certiorari.

Cases referred to :

1. *Podi Nona vs Urban Council, Horana* (1981) 2 Sri LR 141
2. *Jayaweera vs. Wijyaratne* (1985) 2 Sri LR 413

Romesh de Silva, P. C. with Harsha Amarasekera for petitioner.

Wijedasa Rajapakse, PC. with Kapila Liyanagamage for 1st respondent.

S. S. Sahabandu, P. C. with S. Dissanayake for 3rd respondent.

Shibly Aziz, P. C. with W. Dayaratne for 4th respondent.

K. Kanag-Iswaran, P. C. with Nigel Bartholameuz for 5th respondent.

M. Gunatilleke, Senior State Counsel for 2nd, 6th, 7th and 8th respondents.

Cur. adv. vult.

August 01, 2005.

SRIPAVAN, J.

The Petitioner whilst seeking to quash the licences marked P8, P9 and P10 issued by the sixth respondent under the provisions of Act No. 33 of 2002 also seeks an interim order preventing the first respondent from permitting the fourth and fifth respondents from handling and/or transporting bunkers/marine fuel within the port of Colombo without using the Common User Facility (hereinafter referred to as the CUF).

It is common ground that the CUF agreement marked P1 was entered into on 20th August 2002 among the petitioner, first respondent, third respondent and the Secretary to the Treasury acting for and on behalf of the Government of Sri Lanka. The learned President's Counsel as averred in paragraph 57 of the petition submitted that the Government of Sri Lanka has in terms of P1, covenanted, promised and undertaken that all bunkers/marine fuel handled and transported within the Port of Colombo should be handled and transported using the CUF. It is observed that the fourth and the fifth respondents are not parties to the said CUF agreement.

Counsel contended that the first and the second respondents be prevented from acting contrary and/ or in breach of the CUF agreement and thereby the fourth and fifth respondents be prohibited from handling and/or distributing bunkers/marine fuel to ships lying within the Port of Colombo without using the CUF, (*Vide* paragraph 83 of the petition.) The petitioner pleads in paragraph 35 of the petition that the first respondent is about to permit the fourth and fifth respondents to supply bunkers/ marine fuel without using the CUF. It is on this basis Counsel submitted that the impugned licences are invalid *ex-facie*, contrary to the terms and conditions of the CUF agreement and be quashed. (*Vide* paragraph 43 of the petition.)

Having considered the submissions of the learned President's Counsel, the court is of the view that the first respondent's decision to permit the fourth and the fifth respondents to supply bunkers/ marine fuel without using the CUF as contained in the document marked P6 is one taken within the context of the CUF agreement and not in the exercise of any statutory powers vested in the first respondent authority. It is a decision made in the exercise of a power which springs from the agreement marked P1. The contractual relationship among the parties to use the CUF is not regulated by the statute. A distinction needs to be drawn between duties which are statutory and duties arising merely from contract. Contractual duties are enforceable as matters of private law by ordinary contractual remedies. (*Vide Podi Nona vs. Urban Council, Horana*⁽¹⁾ *Jayaweera vs. Wijayarathne*⁽²⁾) Certiorari lies where statutory authorities with powers vested by Parliament exercise those powers to the detriment of the public. It does not lie to remedy grievances arising from an alleged breach of contract.

The impugned licences were issued by the sixth respondent in terms of the provisions contained in Section 5 of Act No. 33 of 2002 passed by Parliament on 17th December 2002. It is thus seen that the said Act was passed after the CUF agreement was entered into by the parties. The powers of the sixth respondent as contained in the said Act cannot be taken away by the CUF agreement marked P1. In other words, the rights of parties in the CUF agreement cannot override the statutory powers of the sixth respondent contained in Act No. 33 of 2002. The grounds on which the petitioner seeks to challenge the impugned licences are succinctly stated in paragraphs 79 and 80 of the petition.

Having regard to the established principles, the statute being superior, reflects the will of the legislature and takes priority over the CUF agreement.

It is an authentic expression of the legislative will and the function of the court is to interpret the statute according to the intent of Parliament. The responsibility of this court is to construe and enforce the laws of the land as they are and not to legislate social or government policy on the basis of the CUF agreement. The court will only intervene and declare the act of the sixth respondent as invalid if it is found that the sixth respondent has exercised his powers in violation of the provisions contained in the said Act. The petition does not disclose any such violation by the sixth respondent. In view of the foregoing, the court does not see any legal basis to issue notice on the respondents. Notice is therefore refused.

BASNAYAKE, J. - I agree.

Notice refused
