

**RANASINGHE VS. MINISTER OF FOREIGN AFFAIRS
AND OTHERS**

COURT OF APPEAL
SATHYA HETTIGE PC (P/CA)
GOONERATNE, J.
CA 601/09
OCTOBER 30, 2009
NOVEMBER 24, 2009
DECEMBER 3, 2009

Writs of Certiorari/Mandamus – Diplomatic Privileges Act 9 of 2009 – Article 1 (e) – Vienna Convention on Diplomatic Relations 1961 – Who is a Diplomatic Agent – Is the petitioner a diplomatic officer? – Duty free concession? – Can concession given under International Covenants be curtailed?

The petitioner an English stenographer attached to the Sri Lanka Mission in Pakistan, on her return to Sri Lanka brought the van imported from Japan and used by her – as ‘personal belongings’. The petitioner complains that she was entitled to import the van ‘duty free’ but the Customs had informed her to pay the import duties.

Held:

- (1) Vienna Convention on Diplomatic Relations of 1961 and Vienna Convention on Consular Relations of 1963 have been given effect to in terms of the Diplomatic Privileges Act 9 of 2009. In terms of Article 1 (e) - a Diplomatic Agent is the head of the Mission or a member of the diplomatic staff of the mission.
- (2) An English stenographer appointed to the Sri Lanka Mission in Pakistan, is not a member of the Mission holding diplomatic rank.

Held further:

- (3) Customary Laws based on the International Conventions have no application to the petitioner once she returns to Sri Lanka on termination of her duties as a non-diplomatic officer in a foreign

mission abroad and she is subject to the laws of Sri Lanka – and is subject to the provisions of the Customs Ordinance and other laws of Sri Lanka.

APPLICATION for Writs of Certiorari/Mandamus.

K. Deekiriwewa with *L. M. Deekiriwewa* and *N. K. Herath* for petitioner.

A. Gnanathasan, PC ASG with *Anusha Jayatilaka SC* for respondent.

Cur.adv.vult.

December 03rd 2009

SATHYA HETTIGE PC J. (P/CA)

This application was listed for support on 30/10/09. Before this application was supported by the counsel for the Petitioner the learned Additional Solicitor General raised two preliminary objections on the maintainability of this application before considering the application for notice being issued on the respondents.

However, this court permitted the learned counsel for the Petitioner to support the application to consider as to whether there was a *prima facie* case as sought by the petitioner. The court was of the view that the preliminary objections raised by the learned Additional Solicitor General could be considered when deciding as to whether there is a *prima facie* case.

The Petitioner had been selected and posted to the Sri Lanka Mission in Karachchi Pakistan as an English stenographer with effect from 01/09/2004 as per the letter dated 07/07/2004 marked “X 3”.

The Petitioner states that she used a Toyota van bearing No. CR 40-0016433 imported from Japan through an Agent

in Pakistan and that she enjoyed a duty free concession when importing the said van as per the rules and conditions applicable to non diplomatic staff attached to a foreign mission in Pakistan. It was submitted further that the Petitioner served in the Sri Lankan Mission in Karachchi for a period of 3 years and 7 (seven) months.

The learned counsel for the Petitioner submitted that the Petitioner, on her return to Sri Lanka in July 2008 brought the said van to Sri Lanka as a “personal belonging” to which she was entitled to bring duty free. The complaint of the Petitioner is that when the motor vehicle was brought to Sri Lanka, the Petitioner had been informed to pay the import duties in a sum of approximately Rs. 4.7 million to clear the vehicle according to the provisions of the Customs Ordinance in Sri Lanka.

The learned counsel for the Petitioner submitted that the Petitioner enjoyed the duty free concessions for all other personal belonging other than the motor vehicle and that the right which accrued to the Petitioner under customary international law based on the Vienna Convention on Diplomatic Relations of 1961 and Vienna Convention on Consular Relation of 1963 cannot be derogated by a Circular provision contained in the Circular (Ministry Instruction Series) no. 165 issued by the Ministry of Foreign Affairs on 07th April 2000. The said Circular is marked “X 11 (c)” to the Petition.

The Petitioner in this application is seeking among other reliefs, a Writ of Certiorari to quash the said Ministry Instructions Series No. 165 dated 07/04/2000 marked “X 11(c)” and also a mandate in the nature of Writ of Prohibition prohibiting the 1st to 5th Respondents from applying the said Circular

marked "X11 (c)" to the vehicle imported by the Petitioner as a personal belonging.

The Petitioner is also seeking a Writ of Mandamus directing the 9th to 11th Respondents not to charge, levy or demand any kind of charges whether basic occupational charges and or penal occupational charges from the Petitioner in respect of the above vehicle bearing chassis no. CR 40-0016433.

The Petitioner also seeks an Interim Relief to clear the said motor vehicle by keeping an irrevocable Bank guarantee in favor of the Director General of Customs for the total Customs Duty.

The learned ASG objected to this application and submitted that the petitioner was only a non-diplomatic officer and that the Petitioner was not entitled to seek duty free concessions when importing the used motor vehicle on her return to Sri Lanka after completion of duties in the foreign mission, which privilege is granted only to diplomatic officers under and in terms of the said Circular and therefore that the application be dismissed *in limine*.

On a perusal of the averments contained in paragraph 2 of the Petition, it is obviously clear that the Petitioner was only an English Stenographer appointed to Sri Lanka's mission in karachchi, Pakistan and not a member of the mission holding diplomatic rank. The learned ASG submitted that the Petitioner cannot seek any facility or any duty concession under the said Circular which is only applicable to diplomatic officers.

The Preamble to the said impugned Ministry Instruction Series dated 07/04/2000 marked X 11 (c) issued by the Secretary Ministry of Foreign Affairs states that as follows:

*“All **Diplomatic Officers** (SLFS and Contract Officers) other than home based staff holding the local rank of Attaché are granted the privilege of importing motor vehicles under the provisions of this Circular. The cost of freight, insurance and GST etc. of such vehicles are met by the Government. They are exempted from payment of Customs Duty and Excise Duty. This privilege is granted because Diplomatic Officers are expected to use their private vehicles on their overseas posts sometimes for official travel also without resorting to hiring of vehicles for such official travel”*

Under eligibility criteria in Para 2 thereof it reads as follows:

“A Diplomatic Officer who has purchased a vehicle within 12 months of his assumption of duties at a Sri Lanka Mission abroad and used it continuously till the end of his tour of duty will become eligible for importing a motor vehicle under this scheme.”

On a careful reading of the said Circular marked “X 11 (c)” on page 3 thereof it is further stated that the Circular has been issued with the concurrence of the Secretary to the Treasury and will come into force with effect from 7th April 2000.

It can further be seen that copies of the said Circular has been sent to

1. Secretary to the Treasury
2. S/PA H. A. & Plantation Industries
3. Auditor General
4. D. G./Customs Department
5. Controller/Imports and Exports
6. Registrar of Motor Vehicles.

It should be noted that this Circular has been in force since 07/04/2000.

Moreover, it is to be noted that the Vienna Convention on Diplomatic Relations 1961 has been given effect to in terms of the Diplomatic Privileges Act No 09 of 2009. Article 1(e) of the Schedule to the said Act defines a “diplomatic agent” as follows:

“a diplomatic agent is the head of the mission or a member of the diplomatic staff of the mission”

Clearly the Petitioner does not fall within either category and therefore the Circular marked “X 11 (c) has no applicability to the Petitioner. I therefore uphold the objections raised by the learned ASG that the Petitioner has no *locus standi* to make this application for Writs of Certiorari and Mandamus on the basis that the Petitioner is not eligible to apply for duty free concessions granted under Circular marked “X 11 (c) and that the Petitioner has no legal right to such concessions.

The counsel for the Petitioner relied on the provisions contained in the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963 and the fact that the Petitioner was given duty free concessions from the Ministry of Foreign Affairs in Islamabad, Pakistan when she imported the said vehicle from Japan into Pakistan.

The learned counsel for the Petitioner at the time of support of this application, took pains to explain and convince court that the concessions given under two International conventions cannot be curtailed or withheld by the sending country except by way of a statute. It was heavily argued by the counsel that question of payment of further duty does not arise as already duty concession has been given under Convention provisions.

However, the learned ASG submitted that the Customary laws based on the above international Conventions have no application to the Petitioner once she returns to Sri Lanka on termination of her duties as a non-diplomatic officer (English Stenographer) in a foreign Mission abroad and that she is subject to the laws of Sri Lanka. The Petitioner is an ordinary citizen once she returns on completion of her duties in a foreign Mission. And as such the Petitioner being a non-diplomatic officer is not entitled to any duty free concessions under the Circular marked "X 11 (c)" and is subject to provisions of the Customs Ordinance and other laws of Sri Lanka.

I disagree with the contention of the learned Counsel for the Petitioner that the Petitioner is entitled to any duty free concessions for the reasons stipulated above. In the circumstances I am of the view that there is no merit in this application and this court cannot grant any relief in favour of the Petitioner.

Accordingly I refuse to issue notice. The application is dismissed without costs.

GOONARATNE J. – I agree.

Notice refused.

Application dismissed.