

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

In the matter of an appeal under and in terms  
of Section 15(11) of the National Gem and  
Jewellery Authority Act No. 50 of 1993 and the  
Supreme Court Rules.

SC Miscellaneous 02/2013

Sudu Hakuruge Sarath Kumara  
Pathkada,  
Kuruwita.

**APPELLANT**

Vs.

1. National Gem and Jewellery  
Authority,  
No. 25, Galle Face Terrace.  
Colombo 03.
2. Prasad Galhena,  
Chairman,  
National Gem and Jewellery  
Authority,  
No. 25, Galle Face Terrace.  
Colombo 03.

**RESPONDENT**

**And Now Between**

Sudu Hakuruge Sarath Kumara  
Pathkada,  
Kuruwita.

**APPELLANT-APPELLANT**

Vs.

1. National Gem and Jewellery  
Authority,  
No. 25, Galle Face Terrace.  
Colombo 03.
2. Prasad Galhena,  
2a. Asanga Welegedera

2b. Aruna Gunawardena  
2c. Amitha Gamage  
2d. Thilak Weerasinghe  
Chairman,  
National Gem and Jewellery  
Authority,  
No. 25, Galle Face Terrace.  
Colombo 03.

**RESPONDENT-RESPONDENTS**

3. B.M.U.D. Basnayake,  
3a. Udaya Senevirathna  
3b. Dr. Anil Jasinghe  
Secretary,  
Ministry of Environment,  
“Sampathpaya”.  
No. 82, Rajamalwatta Road,  
Battaramulla.
4. M.M.S. Anushka Dharmasiri,  
Delgamuwa,  
Kuruwita.
5. A.B. Jayantha Rajapaksha,  
Kahangama,  
Kosgala.

**RESPONDENTS**

6. Kamal Neel Sidantha Ratwatte  
6A. Jayasundera Mudiyansele  
Migara Jayasundera  
Basnayake Nilame, Saman  
Devalaya, Rathnapura.

**Intervient-Respondent**

**Before:** Buwaneka Aluwihare PC J.  
A.H.M.D. Nawaz J.  
Kumudini Wickremasinghe J.

**Counsel:** Chatura Galhena for the Appellant-Appellant.  
Yuresha de Silva, DSG for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.  
Ruwantha Coorey for the 4<sup>th</sup> and 5<sup>th</sup> Respondents.  
C. Wanigapura for the Intervenient-Petitioner.

**Written Submissions:** Written submissions of the Appellant-Appellant on 21.11.2016.

Written submissions of the 1<sup>st</sup> to 3<sup>rd</sup> Respondent-Respondents on 03.01.2017.

**Argued on:** 11.10.2022

**Decided on:** 20.09.2023

## JUDGMENT

**Aluwihare PC. J,**

- (1) The Appellant-Appellant [Hereinafter referred to as the Appellant] invoked the jurisdiction of this Court in terms of Section 15(11) of the National Gem and Jewellery Authority Act No.5 of 1993 [Hereinafter the Act] challenging the decision made by the 3<sup>rd</sup> Respondent, the Secretary of the Ministry of Environment.
- (2) The gravamen of the Appellant was that the 3<sup>rd</sup> Respondent, in arriving at his findings has relied on extraneous material that was not part of the inquiry that was conducted before him.
- (3) If one is to trace back the history of the dispute;
  - (a) The Appellant applied for a Gemming Licence [Hereinafter referred to as the 'Licence'] to the 1<sup>st</sup> Respondent, the National Gem and Jewellery

Authority [hereinafter referred to as the Authority], which is the issuing authority of such licences, in respect of a land called ‘Galamune Kumbura’.

- (b) The 4<sup>th</sup> and 5<sup>th</sup> Respondents also had made similar applications in respect of another land known as Dikwelagawa Arawa, which appears to be contiguous the land the Appellant was interested.
  - (c) Several other parties had intervened and participated in the inquiry that was conducted by the Authority and the application for the licence had been turned down.
- (4) Consequently, the Appellant had appealed against the said refusal of the Authority to the 3<sup>rd</sup> Respondent, Secretary to the Ministry of Environment [hereinafter referred to as the ‘Secretary’] in terms of Section 15(8) of the Act.
- (5) Along with the Appellant the 4<sup>th</sup> and 5<sup>th</sup> Respondents also had appealed to the Secretary, in respect of the refusal to grant the licence to them by the Authority. The Secretary thereupon had consolidated both applications and had held a common inquiry in respect of both the appeals which had been held on the 12.09.2012.
- (6) The learned Counsel for the Appellant contended that, at the said inquiry, representations on behalf of the 4<sup>th</sup> and 5<sup>th</sup> Respondents [the two other parties who were seeking licence], the Land Reform Commission and Basnayake Nilame of the Sabaragamuwa Maha Saman Devalaya [hereinafter referred to as the ‘Devalaya’] were entertained.
- (7) Accordingly, the Secretary by his letter dated 21.01.2013, had communicated his decision [A4] regarding the two appeals by the Appellant and the 4<sup>th</sup> and 5<sup>th</sup> Respondents. The Secretary had come to a finding that the land named Galamune Kumbura Dikwelagawa Arawa, are one and the same land and had

recommended issuing of a licence to the 4<sup>th</sup> and 5<sup>th</sup> Respondents, however, the application of the Appellant was not allowed.

- (8) It was argued on behalf of the Appellant that, in arriving at the decision, the Secretary had relied heavily on the contents of a letter submitted by the Basnayake Nilame of the Devalya. It was pointed out that the said letter had been submitted long after the inquiry and the date granted to the parties to tender written submissions. The impugned letter is dated 13.01.2013 and had been submitted four months after the inquiry was concluded.
- (9) The learned Counsel for the Appellant argued that none of the parties were privy to the contents of the said letter and furthermore, the position taken by the Basnayake Nilame in the said letter is contrary to the position he took at the inquiry.
- (10) Although Basnayake Nilame was not a party to the instant Appeal, this court allowed the application of the Basnayake Nilame to intervene and was added as a party by its order dated 06.03.2017 and consequently was cited as the 6<sup>th</sup> intervenient Respondent.
- (11) Among other grounds, the main thrust of the argument on behalf of the Appellant was that the findings arrived at, by the Secretary upon the inquiry cannot stand, as there was a blatant violation of rules of natural justice and that, not only the 3<sup>rd</sup> Respondent had relied on extraneous matters to arrive at his conclusions but also none of the parties were given an opportunity to respond to the representations made by the Basnayake Nilame way after the conclusion of the inquiry.
- (12) On behalf of the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents, the learned Deputy Solicitor General submitted that, although 4<sup>th</sup> and 5<sup>th</sup> Respondents were issued with a gemming licence, it was only for a period of one year as it remained suspended in view of the present case. It was further submitted that, as the said licence has lapsed,

the present appeal is now academic and granting of substantive relief prayed by the Appellant would be futile.

(13) The written submissions filed on behalf of the said Respondents, however, is silent on the main ground of appeal referred to earlier, namely the consideration of extraneous material by the 3<sup>rd</sup> Respondent in arriving at his findings. The 3<sup>rd</sup> Respondent has neither refuted the contention of the Appellant that he considered the contents of the letter submitted by the Basnayake Nilame after the inquiry nor justified his action.

(14) Sub Sections (8) to (11) of Section 15 of the Act read as follows;

*(8) Where the Authority;*

*(a) refuses an application for a licence made under subsection (3) ;*

(16)

*(b) revokes a licence under subsection (7),*

*the applicant or the licensee may before the expiry of a period of thirty days from the date of such refusal or revocation, as the case may be, appeal to the **Secretary to the Ministry of the Minister** (hereinafter referred to as the Secretary)*

*(9) The Secretary may, on any appeal made to him under subsection (8)*

*(a) allow the appeal and direct the Authority to issue or renew the licence; or*

*(b) disallow the appeal.*

*(10) The Authority shall comply with any direction issued to it under subsection (9).*

*(11) An applicant or licensee dissatisfied with a decision of the Secretary disallowing, under subsection (9), as appeal made to such Secretary under subsection (8), may appeal from such decision of the Secretary, to the Supreme Court, within thirty days of the date on which such decision is communicated to him.*

- (15) The statutory provisions referred to above are unambiguous and the Secretary's mandate in exercising the powers vested in him by virtue of Section 15 (9) of the Act is to sit in appeal and review the decision of the Authority in refusing the licence and to decide whether the refusal of the licence on the material placed before the Authority is justified or not.
- (16) In reviewing the decision of the Authority, the Secretary may permit the parties to make representation on their behalf, however, as a matter of rule, has to rely on the material considered by the Authority in refusing the grant of licence. In exceptional situations, however, may permit fresh material.
- (17) In the instant case the reason for the refusal of the licence was twofold;
- (1) The land in question was part of the corpus in a partition case [DC Rathnapura 20008/P] and that the court was yet to deliver the final judgement.
  - (2) The Authority was not in a position to clearly identify the respective lots claimed by the parties. [Vide letter issued by the Authority to the parties dated 16.03.2012]
- (18) The Secretary only had a mandate to consider whether the Authority was justified in refusing the licences to the applicants on the ground referred to above. The Secretary, however, in upholding the decision of the Authority in refusing the licence sought by the Appellant had come to a finding that there is no distinct land called Galamune Kumbura. In doing so, the Secretary had made a distinct reference to the assertion made by the Basnayake Nilame of the Devalaya regarding the impugned lands, in the letter the Basnayake Nilame sent to the Secretary more than three months after the inquiry was concluded.

- (19) The Appellant’s main contention was that the Secretary ought not to have relied on the contents of the said letter of the Basnayake Nilame without first affording an opportunity to the Appellant to respond to the said assertions of the Basnayake Nilame therein. The Secretary on the other hand had overturned the decision of the Authority in refusing the licence to the 4<sup>th</sup> and 5<sup>th</sup> Respondents and had directed the Authority to issue a licence to the 4<sup>th</sup> and 5<sup>th</sup> Respondents.
- (20) I am of the view that the rules of natural justice required the Secretary to afford an opportunity to the Appellant and other parties to respond to the impugned letter if the Secretary were to act on it, which the Secretary did not do.
- (21) As Dr. Sunil Cooray points out [Principles of Administrative Law in Sri Lanka 4<sup>th</sup> Edition, page 477], “*The traditional view was that the rules of natural justice applied only to decisions making process which the courts classified as ‘judicial’ and ‘quasi-judicial’. Today, that is not quite the idea*”. Quoting Justice U de Z Gunawardena in **Geeganage v. Director General of Customs** [2001] 3 SLR 179, Dr. Cooray states; “that, the theory is obsolescent if not obsolete. Phrases that have come into use more recently in this context are the ‘duty of fair play’ ‘duty of fairness’ and ‘acting fairly’. Justice Mark Fernando remarked, in the case of **Wijayapala Mendis v. Perera** [1999] 2 SLR 110 at 148 “natural justice is fairness in action”.
- (22) In the case of **Wijayapala Mendis v. Perera** [supra], the Court observed that “*the proceedings of the Commission were not strictly adversarial in nature; the Commissioners had a duty to ascertain the facts themselves. In several instances, the Commission refrained from calling important witnesses*”. This duty to summon and examine important witnesses, is not a separate duty, but part of the duty to hear, which is the “*audi alteram partem*” rule.
- (23) I find the Secretary fell into error when he decided to act on the contents of the letter of the Basnayake Nilame without ascertaining the veracity of its contents and/or the stand the Appellant took regarding the same. In the circumstances



aforesaid I am of the view that the decision of the Secretary which is impugned in these proceedings cannot be allowed to stand. Accordingly, the decision of the Secretary [3<sup>rd</sup> Respondent] A6 dated 18.01.2013 is hereby quashed, and we direct the incumbent Secretary to reconsider the appeal of the Appellant on its merits, in terms of Section 15(9) of the Act.

*Appeal allowed*

JUDGE OF THE SUPREME COURT

A.H.M.D. Nawaz J.

I agree

JUDGE OF THE SUPREME COURT

Kumudini Wickremasinghe J.

I agree

JUDGE OF THE SUPREME COURT