

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

In the matter of an Appeal in terms of Article
128 of the Constitution read with Section 9(a)
of the High Court of the Provinces (Special
Provisions) Act No. 19 of 1990.

Officer-In-Charge,
Police Station,
Wennappuwa.

Complainant

SC Appeal No: 101/2012

HCA Appeal No: 11/2011

MC Marawila Case No: 47051/C/X

Vs.

Nishantha Gamage
No. 34/A, Meda Katukenda,
Dankotuwa.

Accused

Hetti Achchige Anton Sujeewa Perera
No. 30/01, Bolawatta Road,
Dankotuwa.

Claimant

And between

Hetti Achchige Anton Sujeewa Perera

No. 30/11, Bolawatta Road,

Dankotuwa.

Claimant-Appellant

Vs.

1. Hon. The Attorney General
Attorney General's Department,
Colombo 12.

Respondent

2. Officer-In-Charge,
Police Station,
Wennappuwa.

Complainant-Respondent

3. Nishantha Gamage
No. 34/A, Meda Katukenda,
Dankotuwa.

Accused-Respondent

And between

Hetti Achchige Anton Sujeewa Perera

No. 30/01, Bolawatta Road,

Dankotuwa.

Claimant-Appellant-Appellant

Vs.

1. Hon. The Attorney General

Attorney General's Department,
Colombo 12.

Respondent-Respondent

2. Officer-In-Charge,
Police Station,
Wennappuwa.

Complainant-Respondent-Respondent

3. Nishantha Gamage
No. 34/A, Meda Katukenda,
Dankotuwa.

Accused-Respondent-Respondent

Before : Priyantha Jayawardena PC, J
A. L. Shiran Gooneratne, J
Arjuna Obeyesekere, J

Counsel : K. A. Upul Anuradha Wickramaratne for the Claimant-Appellant-Appellant.
Anoopa De Silva, DSG for the Complainant-Respondent-Respondent.

Argued on : 30th November, 2021

Decided on : 5th July, 2023

Priyantha Jayawardena PC, J

Facts of the case

This is an appeal to set aside the judgment of the Provincial High Court holden in Chilaw [hereinafter referred to as the “High Court”], dismissing an appeal preferred against an Order that forfeited a lorry transporting gravel without a valid licence by the Magistrate’s Court.

The claimant-appellant-appellant [hereinafter referred to as the “appellant”] is the registered owner of the lorry bearing registration number SG GM-1178, which was forfeited to the State by the learned Magistrate.

The driver of the said lorry was arrested by the Police while transporting gravel without a valid licence and proceedings were instituted against the driver in the Magistrate’s Court of Marawila in terms of section 136(1)(b) of the Code of Criminal Procedure, Act No. 15 of 1979, as amended [hereinafter referred to as the Code of Criminal Procedure]. Further, the said lorry, along with the gravel, was produced in the Magistrate’s Court by the Police.

Subsequently, the learned Magistrate had framed a charge against the said driver under section 182(1) of the Code of Criminal Procedure for transporting two cubes of gravel in a vehicle bearing registration number SG GM-1178 without a valid licence issued in that behalf by the Competent Authority, and that the said driver committed an offence by violating section 28(1) of the Mines and Minerals Act No. 33 of 1992, punishable under section 63(1) of the said Act.

The driver of the lorry had pleaded guilty to the said charge. Accordingly, he was convicted and imposed a fine of Rs. 60,000/-, which was paid by him on the same day. Further, the two cubes of gravel that were being transported were forfeited by the learned Magistrate and ordered to be released to the State Engineering Corporation.

On an application made by the appellant, who is the owner of the lorry, the said lorry was released to the appellant on a bond of Rs. 1,500,000/-, pending the inquiry in terms of section 63A(2) of the Mines and Minerals Act as amended by Act No. 66 of 2009. At the said inquiry, only the appellant had given evidence.

After the conclusion of the said inquiry, the learned Magistrate delivered the Order holding that the appellant had failed to take the necessary precautions to prevent the driver of the said lorry

from illegally transporting gravel without a valid licence, and therefore, the said lorry was forfeited in terms of section 63(1) of the Mines and Minerals Act No. 33 of 1992.

Being aggrieved by the Order of the learned Magistrate forfeiting the said lorry, the appellant had preferred an appeal to the High Court to set aside the said Order.

After the hearing of the said appeal, the High Court held that the appellant had no right to appeal against the Order of the Magistrate's Court to forfeit the lorry used for the offence in terms of the Mines and Minerals Act, and affirmed the Order of the learned Magistrate dated 22nd of December, 2010.

Being aggrieved by the said judgment, the appellant had moved the High Court to grant leave to appeal to the Supreme Court in terms of section 9(a) of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, and leave to appeal was granted on the following questions of law:

- “i. Was the charge framed in this case legal and valid when it did not contain the mandatory requirement prescribed by section 164(4) of the Code of Criminal Procedure No. 15 of 1979 to mention in it the law and the section of the law under which the said confiscation/forfeiture, being a punishment, could be made?
- ii. Did this Provincial High Court err in law in dismissing Appeal No. HCA 11/2011 filed against the confiscation/forfeiture of lorry No. SGGM 1178 based upon the conviction of the accused-respondent-respondent of such an illegal and invalid charge?
- iii. Did this Provincial High Court err in law when it upheld the confiscation/forfeiture of the said lorry based on a conviction of a charge punishable under section 63(1) of the Mines and Minerals Act No. 33 of 1992 neither which nor any amending act thereof had provided for the confiscation/forfeiture of a vehicle?
- iv. Did the Provincial High Court err in law when it refused Appeal No. HCA 11/2011 filed by the petitioner based on a preliminary objection raised by the learned State Counsel of the said High Court which was not tenable in law?”

When the instant appeal was taken up for hearing, the parties to the appeal submitted that, even though the learned High Court Judge dismissed the appeal on the premise that the appellant had

no right to appeal against an Order made under section 63B(1) of the Mines and Minerals Act No. 34 of 1992, as amended by Act No. 66 of 2009 [hereinafter referred to as the “Mines and Minerals Act”] section 63B(3) of the said Act provides for an appeal against an order made for forfeiture. Hence, both counsel appearing for the appellant and the respondent submitted that they will confine themselves only to the third question of law set out above.

Submissions of the appellant

The learned counsel for the appellant submitted that section 63B(1) of the Mines and Minerals Act, as amended, confers power on the Magistrate to forfeit any mineral, machinery, equipment or material used in or in connection with the commission of an offence under the said Act.

However, the aforesaid section does not specifically refer to vehicles and therefore, the said section does not confer power on the Magistrate’s Court to forfeit vehicles. Further, similar Acts such as section 40(1) of the Forest Conservation Ordinance, section 3A of the Animals Act, and section 79 of the Poisons, Opium and Dangerous Drugs Act expressly provide for the “vehicle” used in the commission of an offence to be forfeited to the State.

Furthermore, the learned counsel contended that if the words in an Act are clear, the court does not need to interpret the words and cited the Court of Appeal judgment delivered by Justice Salam in *Nishantha and 3 others v State* [2014] 1 SLR 105 in support of said contention.

Moreover, the learned counsel cited the case of *P.S. Priyantha Rajapakshe v Hon. Attorney General (CA/PHC No. 72/2012) CA Minutes 27th of October, 2012*, where the Court of Appeal had released the vehicle to the registered owner following the aforementioned judgment (*Nishantha and 3 others v State* [2014] 1 SLR 105).

In the circumstances, the learned counsel for the appellants stated that the Order of the learned Magistrate and the learned High Court Judge erred in law and therefore, the said judgments should be set aside.

Submissions of the respondent

The learned Deputy Solicitor General for the respondent submitted that the purpose of the Mines and Minerals Act is to regulate, *inter alia*, the transportation of minerals. In this regard, the learned Deputy Solicitor General drew the attention of the court to the long title of the Mines and Minerals Act and submitted that if the intention of the legislature was to regulate the transportation of minerals, it is necessary for the forfeiture of the vehicle being used to illegally transport the gravel to achieve the intention of the said Act.

Further, it was contended that if the submissions of the appellant that the language of section 63B(1) of the Mines and Minerals Act as amended, in its ordinary meaning and grammatical construction is accepted, that would lead to absurdity. Thus, the said section cannot be interpreted to mean that only mineral, machinery, equipment or material used in or in connection with the commission of the offence or the proceeds of the sale of any such mineral or material deposited in court under the proviso to section 63A can be forfeited to the State, as the offence of transportation of gravel cannot be committed without the use of a vehicle. Therefore, the said Act requires the forfeiture of vehicles involved in the commission of an offence under section 63(1) of the Act.

Hence, it is necessary to adhere to the ordinary meaning of the words used in the statute and to the grammatical construction, unless that is at variance with the intention of the legislature. However, if the language of the statute leads to any manifest absurdity, the language may be varied or modified so as to avoid such absurdity.

I shall now consider the following question of law where leave to appeal was granted by the High Court.

Did the Provincial High Court err in law when it upheld the forfeiture of the lorry under consideration based on a conviction of a charge punishable under section 63(1) of the Mines and Minerals Act No. 33 of 1992?

The issue that needs to be considered in the instant appeal is whether the lorry used to transport gravel could be forfeited to the State after an inquiry held under section 63B(1) of the Mines and Minerals Act No. 33 of 1992, as amended by Act No. 66 of 2009.

In order to consider the above, the provisions of the Mines and Minerals Act and the purpose of enacting the Act would be considered first. Thereafter, the effects of the Mines and Minerals Act (Amendment) No. 66 of 2009 will be considered.

Mines and Minerals Act No. 33 of 1992

The long title of the said Act states as follows;

“An Act to provide for the establishment of the geological survey and mines bureau to regulate the exploration for, mining, transportation, processing, trading in or export of, minerals for the transfer to such bureau of the functions of the department of geological survey for the repeal of the salt ordinance (chapter 211) the radioactive minerals act, No. 46 of 1968, and the mines and minerals law, No. 4 of 1973; and to provide for matters connected therewith or incidental thereto.”

[emphasis added]

Upon a careful consideration of the long title of the Mines and Minerals Act, it is evident that the Mines and Minerals Act No. 33 of 1992 repealed the Salt Ordinance (chapter 211), Radioactive Minerals Act, No. 46 of 1968, and the Mines and Minerals Law, No. 4 of 1973 and established the Geological Survey and Mines Bureau to regulate the exploration for, mining, **transportation**, processing, trading in or export of, minerals and to provide for matters connected therewith or incidental thereto with the view to having a more efficient and effective framework to regulate the exploration of mining in the country.

Thus, repealing the previous legislation and enacting the new Act, which consolidated the important provisions contained in the repealed legislation and introducing new provisions, shows the intention of Parliament and the importance placed by the legislature in revising the laws at that time.

However, the Principal Act did not provide sufficient stringent provisions to regulate the exploration for mining, transportation, processing, trading in or export of minerals. Particularly, there were no provisions to detect and forfeit to the State the machinery, equipment, material or vehicles used in or in connection with the commission of an offence under the Mines and Minerals Act. Moreover, the punishments stipulated in the Principal Act were not sufficient deterrents to prevent violations under the said Act from occurring again.

Mines and Minerals (Amendment) Act No. 66 of 2009

Therefore, as the State could not achieve the intention of the Parliament in enacting the Principal Act due to lack of sufficient provisions in it, the legislature amended sections 4, 5, 6, 8, 12, 13, 20A, 27, 28, 29, 30, 31, 33, 35, 37, 42, 46, 46A, 47, 48, 49, 51, 55, 57, 58, 61, 63, 64, 68, and 70 of the Principal Act by enacting the Mines and Minerals (Amendment) Act No. 66 of 2009.

Thus, a careful consideration of the said amendments to the Principal Act fortifies the said observation made with regard to the intention of the legislature in enacting the Principal Act. Thus, the intention of the Parliament in enacting and amending the Principal Act is a necessary factor that should be taken into consideration in interpreting the provisions of the said Act.

In this regard, *N S Bindra's Interpretation of Statutes*, Tenth Edition at page 492 to 493 states;

“Turner LJ observed in the case of *Hawkins v Gathercole* (1855) 6 DM & G1, ‘Regard must be had to the intent and meaning of the legislature’. The rule upon this subject is well expressed in the case of *Stradling v Morgan* 75 ER 308.”

Further, Lord Blackburn cited the said judgment with approval in ***Charles Bradlaugh v Henry Lewis Clark Appeal* [1893] 8 AC 354 at 373**, which held as follows:

“... where a statute was passed for the purpose of repealing and in part re-enacting former statutes *in pari materia* are to be considered in order to see what it was that the legislature intended to enact in lieu of the repealed enactments. It may appear from the language used that the legislature intended to enact something quite different from the previous law, and where that is the case effect must be given to the intention.”

Ownership and Discovery of Minerals

Section 26 of the Mines and Minerals Act, as amended, states that the ownership of minerals is vested with the State notwithstanding any right of ownership that any person may have to the soil where the minerals are found or situated.

Mining to be under the authority of a licence

Section 28(1) of the said Act states:

*“No person shall explore for, mine, **transport**, process, store, trade in or export any mineral **except under the authority of, or otherwise than in accordance with, a licence issued in that behalf under the provisions of this Act and the regulations made thereunder:***

Provided”

[emphasis added]

Thus, section 28(1) of the said Act imposes restrictions, *inter alia*, on the transportation of minerals without a valid license.

Offences

Section 63(1) of the said Act states:

“(1) Any person who-

- (a) Explores for, or mines, processes, stores, **transports**, trades in or exports, any mineral **without a licence in that behalf issued under this Act;***
- (b)*
- (c)*
- (d) being the holder of a licence issued under this Act, fails to notify the Bureau of the discovery of any mineral discovered by him in the carrying out of the activities authorized by the licence, shall be guilty of an offence under this Act and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding five hundred thousand rupees and in the case of a second or subsequent offence, to a fine not exceeding one million rupees or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.”*

[emphasis added]

Thus, in terms of section 63(1)(a) of the Mines and Minerals Act as amended, any person who explores or mines minerals, processes, stores, **transports**, trades in or exports any minerals without a valid license in that behalf issued under the Act commits an offence under the Act. It is important

to note that exploration or mining, storing, transporting, trading or exporting of any minerals are separate and distinct offences under the said section.

Further, as stated above, the Principal Act was amended by inserting sections 63A and 63B along with several other sections to achieve the object of the Principal Act by conferring power on Police Officers to seize and then forfeit to the State, any machinery, equipment or materials used in or in connection with the commission of an offence when an offence has been committed under this Act.

Power to seize any mineral, machinery, equipment or material

Section 63A of the Mines and Minerals Act states as follows:

*“(1) A police officer who has reasonable grounds to believe that an **offence has been committed under this Act** may, with or without a warrant, seize any mined mineral quantity of mineral which has been mined, or any machinery, **equipment** or material used in or in connection with, the commission of that offence.*

*(2) Where any mineral, machinery, equipment or material is seized by a police officer in pursuance of the powers conferred on him by this section, he shall forthwith produce such mineral, machinery, **equipment** or material before, or make it available for inspection by, a Magistrate, who shall make such order as he thinks fit relating to the detention or custody of such mineral, machinery, **equipment** or material, pending the conclusion of a prosecution instituted in respect of such mineral, machinery, **equipment** or material.*

*Provided however, that where **any** minerals, machinery, **equipment** or material so seized is subject to speedy decay, the Magistrate may order that such minerals, machinery, **equipment** or material be sold and the proceeds of such sale be deposited in Court.”* [emphasis added]

Thus, section 63A confers power on Police Officers to **seize any machinery, equipment, or materials used in or in connection with the commission of an offence** under the said Act and produce them in the Magistrate’s Court.

Power to forfeit to the State

Section 63B of the said Act reads as follows:

*“(1) Where any person is convicted of an offence under this Act, the Magistrate may make order that **any mineral, machinery, equipment or material used in, or in connection with, the commission of that offence** or the proceeds of the sale of any such minerals, or material deposited in court under the proviso to section 63A, be forfeited to the State.”*

(2) Any mineral, machinery, equipment or material forfeited by an order under subsection (1), shall vest absolutely in the State upon the making of such order.

(3)

(4) The Court shall cause any mineral, machinery, equipment or material which has been vested in the State under subsection (2) to be sold and the proceeds of such sale to be deposited in Court.” [emphasis added]

Thus, section 63B(1) of the Act confers power on the learned Magistrate to forfeit to the State **any** minerals, **machinery, equipment** or material produced in court under section 63A of the said Act where any person is convicted of an offence under the Act.

However, the Mines and Minerals Act does not provide for an interpretation of the words “minerals, machinery, equipment, or material” referred to in the Act.

Does the Magistrate’s Court have jurisdiction to forfeit to the State a vehicle under section 63B(1) of the Act?

Thus, it is necessary to consider whether a vehicle (lorry, tractor, tipper, boat, ship, etc.) that is used to transport minerals contravening the provisions of the Act could be forfeited to the State by a Magistrate after a conviction for committing an offence under the Act, when section 63B(1) of the Mines and Minerals Act has not specifically referred to the forfeiture of ‘**vehicles**’.

A cursory glance at sections 63A and 63B shows that a ‘vehicle’ is not specifically included in the said sections. Thus, it is necessary to consider whether the words “any”, “machinery” and/or

“equipment” “**used or in connection with the commission of an offence**” in the said section comes within the scope of sections 63A and 63B, notwithstanding the fact that a ‘vehicle’ is not specifically referred to in the said sections.

In interpreting a provision of law, it is necessary not only to look at the words of the section on the face of the provision but also to consider the real meaning of it. Further, the legal meaning shall prevail over a mere literal meaning on the face of a word or a phrase in an Act. Particularly, the real meaning of a word should be considered when the meaning on the face of a word does not lead to achieving the object of the Act or leads to absurdity over the real intended meaning by enacting the legislation.

Further, if the plain meaning of the words used in an Act would lead to absurdity or be contrary to the very purpose for which the legislation has been enacted, the intention of the legislature should be ascertained and taken into consideration not only in considering a particular section but also the entire Act and its amendments.

Furthermore, an interpretation of an Act shall not curtail the effect of the intended purpose of the Act or restrict the results that it would otherwise achieve. Hence, it is necessary to adopt a construction that would not result in futility, lead to difficulties in implementing an Act or cause hardships to the public at large.

In the circumstances, a question will arise as to whether a “machinery” or “equipment” can be used to transport the minerals. In this regard, it is necessary to give a purposive interpretation to the words “**machinery**” or ‘**equipment**’ in order to achieve a logical and rational meaning. Moreover, giving an interpretation confined to these words will make the said part of the section futile.

Hence, taking into consideration the rapid development in the technology of the equipment and machinery used in the mining industry, the aforementioned words should be given an interpretation that would be applicable to include the modern equipment and machinery used at present.

Therefore, the dictionary meaning of the word *equipment* will be considered to ascertain the real meaning and the intended purpose of using the word “equipment” referred in the said Act.

Dictionary meaning

“equipment”

Black’s Law Dictionary (2nd edition) defines the word ‘equipment’ as:

“Tools, be they devices, machines/**vehicles**. Assist a person in achieving an action beyond the normal capabilities of a human. Tangible property that is not land/buildings, but facilitates business operation. [emphasis added]

Further, *Stroud’s Judicial Dictionary* (6th edition) defines the word “equipment” as:

“Equipment for the purposes of s.1(1)(a) of the Employer’s Liability (Defective Equipment) Act 1969 (c.37) was held to be wide enough to **include a ship of whatever size, notwithstanding that ships are not specifically mentioned in the definition of “equipment” in subsection (3), whereas vehicles and aircrafts are** (*Coltman v Bibbly Tankers* [1987] 3 (3) W.L.R. 1181).” [emphasis added]

Furthermore, in *Coltman v Bibbly Tankers* (*supra*), it was held that the term **“ship” should be included in the term “equipment” to achieve the intention of Parliament by making employers liable for the injury or death of employees.**

Longman Dictionary defines “equipment” as:

“the tools, machines etc. that you need to do a particular job or activity.”

[emphasis added]

Thus, the dictionary meaning of the word ‘equipment’ shows that the word “equipment” includes a vehicle used in or in connection with the commission of that offence under Mines and Minerals Act No. 33 of 1992.

Applicability of Article 27(14) of the Constitution

Article 27(14) of the Constitution states:

“The State shall respect, preserve and improve the environment for the benefit of the community.”

Hence, Article 27(14) requires the court to interpret the provisions of Mines and Minerals Act No. 33 of 1992, as amended, to harmonise with the said Article, as the Constitution is the Supreme Law of the country. Further, no Act should be interpreted contrary to the provisions of the Constitution. Thus, as mining has a direct impact on the environment, the provisions of the Mines and Minerals Act No. 33 of 1992 should be interpreted in harmony with Article 27(14) of the Constitution. Further, in this instance, such an interpretation is necessary in order to preserve and improve the environment for the benefit of the community.

A similar view was observed in the case of *Bulankulama and others v Secretary, Ministry of Industrial Development and others* [2000] 3 SLR 243, where it was held:

“Article 27(14) states that “The State shall protect, preserve and improve the environment for the benefit of the community.” Article 28(f) states that the exercise and enjoyment of rights and freedoms (such as the 5th and 7th respondents claimed in learned counsel’s submissions on their behalf to protection under Article 12 of the Constitution relating to equal protection of the law) “is inseparable from the performance of duties and obligations, and accordingly it is the duty of every person in Sri Lanka to protect nature and conserve its riches.””

Consideration of the word “any” in section 63B

Section 63B of the Mines and Minerals Act also provides for **any** mineral, machinery, **equipment** or material used in or in connection with the commission of that offence to be forfeited to the State by the Magistrate. Taking into consideration the intention of the legislature and the scheme of the Act, the said amendment to the Principal Act shows that the legislature has used the word “**any**”, as it is not practical to specify all the minerals, machinery, equipment or materials that may be used for exploration of minerals. Thus, the word “any” referred to in the said section shows that the said word has been intentionally used to include **any** mineral, machinery, **equipment** or material that has been used in connection with an offence committed under the said Act.

Applicability of section 28

Further, section 63B(1) should be considered along with the other provisions of the said Act. Particularly, section 28(1) of the Act which prohibits *inter alia* the transportation of minerals

without a licence. Accordingly, any person transporting minerals without a valid licence commits an offence under the Act. Thus, such a person is liable to be convicted under section 63(1) of the said Act.

Furthermore, as stated above, section 63B(1) has conferred power on the learned Magistrate to forfeit to the State any mineral, machinery, equipment or material used in or in connection with the commission of an offence under the Act. Moreover, as the transportation of minerals without a valid licence issued under the Act is an offence under the said Act, the equipment used to transport minerals falls within the scope of section 63B(1). In this regard, it is pertinent to note that any machinery, equipment or material used not only directly for exploration of mining but also anything that would facilitate mining and transportation are subject to the scope of the said section.

Thus, having considered the aforesaid dictionary meaning and the context where the word “equipment” is used in the Mines and Minerals Act, I am of the opinion that the word “equipment” used in the Act should be taken to include a ‘vehicle’ (lorry, tipper or even a bullock cart) used to transport minerals without a valid license issued under the said Act.

Therefore, I am of the view that the High Court did not err in law when it upheld the forfeiture of the said lorry, which was transporting gravel contrary to the provisions of the said Act, based on a conviction of a charge punishable under section 63B(1) of the Mines and Minerals Act as amended.

Further, the judgment delivered in *Nishantha and 3 others v State (supra)* has not considered section 63B(1) of the said Act, as amended in the above context. Furthermore, in the said judgment, the aforementioned amendments to the Principal Act were not considered in the context of sections 26, 28(1), 63(1), 63A and 63B of the Act and in the light of the object of enacting the Principal Act. As a result, the said interpretation defeats the object of the said amendments made to the Principal Act. Moreover, I am of the opinion that the interpretation given to the word “equipment” in the said judgment is repugnant to Article 27(14) of the Constitution. Thus, I am of the view that the said judgment is per in curium though it was cited by the appellants.

In light of the above, the following question of law should be answered as follows:

Did this Provincial High Court err in law when it upheld the confiscation/forfeiture of the said lorry based on a conviction of a charge punishable under section 63(1) of the Mines and Minerals

Act No. 33 of 1992 neither which nor any amending act thereof had provided for the confiscation/forfeiture of a vehicle?

No

The appeal is dismissed. I order no costs.

Judge of the Supreme Court

A. L. Siran Gooneratne, J

I Agree

Judge of the Supreme Court

Arjuna Obeysekere, J

I Agree

Judge of the Supreme Court