

**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

Beligaswatta Akkarakuruppu
Mudiyanselage Lal Dhammika Pushpa
Kumara,
Ovitakanda, Bogodaaramba,
Pelmadulla.

Permit Holder

Vs

SC Miscellaneous 02/2012

Rev. Bengamuwe Sri Rathnapala
Dammadinna Thero,
Pelmadulla Rajamaha Viharaya,
Pelmadulla.

Objector

AND

Beligaswatta Akkarakuruppu
Mudiyanselage Lal Dhammika Pushpa
Kumara,
Ovitakanda, Bogodaaramba,
Pelmadulla.

Permit Holder Appellant

Vs.

Rev. Bengamuwe Sri Rathnapala
Dhammadinna Thero,
Pelmadulla Rajamaha Viharaya,
Pelmadulla.

Objector- Respondent

AND NOW

Beligaswatta Akkarakuruppu
Mudiyanselage Lal Dhammika Pushpa
Kumara,
Ovitakanda, Bogodaaramba,
Palmadulla.

Permit Holder- Appellant- Appellant

Vs.

1. Rev. Bengamuwe Sri Rathnapala
Dhammadinna Thero,
Pelmadulla Rajamaha Viharaya,
Pelmadulla.

Objector- Respondent- Respondent

2. National Gem And Jewellery Authority,
25, Galle Face Terrace, Colombo 3
3. Wimalaratne Muthugala,
Senior Regional Manager
National Gem and Jewellery Authority,
Ratnapura

4. General Rohan Daluwatte,
Former Chairman,
National Gem and Jewellery Authority,
25, Galle Face Terrace, Colombo 3

5. Anil Koswatta,
Former Chairman
National Gem and Jewellery Authority,
25, Galle Face Terrace, Colombo 3

6. B.M.U.D. Basnayake
Secretary,
Ministry of Environment
“Sampath Paya”
No.82, Rajamalwatta Road,
Battaramulla, Palmadulla.

7. Wajira Narampanawa
Chairman,
National Gem and Jewellery Authority,
No.25, Galle Face Terrace, Colombo 03.
(Ceased to hold office)

- 7a. Aruna Gunawardane,
Chairman and Chief Executive Officer,
National Gem and Jewellery Authority,
No.25, Galle Face Terrace, Colombo 03
(Ceased to hold office)

- 7b. Thilak Weerasinghe,
Chairman and Chief Executive Officer

National Gem and Jewellery Authority
No. 25, Galle Face Terrace, Colombo 03

8. N. Rupasinghe,
Secretary,
Ministry of Environment,
“Sampathpaya”
No. 82, Rajamalwatta Road,
Battaramulla
(Ceased to hold office)
- 8a. Udaya R. Seneviratne,
Secretary
Minister of Mahaweli Development and Environment
“Sampathpaya”
No.82, Rajamalwatta Road,
Battaramulla
(Ceased to hold Office)
- 8b. Dr. Anil Jasinghe
Secretary,
Ministry of Environment,
“Sobadampiyasa”
No. 416/C/1, Robert Gunawardana Mawatha
Battaramulla.
9. Gen. Daya Ratnayake (Retd.),
Secretary,
Ministry of Industries
No. 73/1, Galle Road.
Colombo 03

Respondents

AND NOW BETWEEN

Beligaswatta Akkarakuruppu
Mudiyanselage Lal Dhammika Pushpa
Kumara,
Ovitakanda, Bogodaaramba,
Pelmadulla.

Permit Holder- Appellant- Appellant- Appellant

Vs.

1. Rev. Bengamuwe Sri Rathnapala
Dammadinna Thero,
Pelmadulla Rajamaha Viharaya,
Pelmadulla.

Objector- Respondent- Respondent- Respondent

2. National Gem And Jewellery Authority,
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3. Wimalaratne Muthugala,
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Battaramulla.
9. Gen. Daya Ratnayake (Retd.),
Secretary,
Ministry of Industries
No. 73/1, Galle Road.
Colombo 03

Respondents- Respondents

Mrs. J.M. Thilaka Jayasundara
Secretary
Ministry of Industries,
No. 73/1, Galle Road Colombo 03.

Respondent

BEFORE : **MURDU N.B. FERNANDO, PC., CJ.**
K.KUMUDINI WICKREMASINGHE, J.
JANAK DE SILVA, J.

COUNSEL : A.S.M. Perera PC with Chathurika Witharanage for Permit holder
Appellant- Appellant- Appellant.

Rajitha Hathurusinghe for Objector Respondent- Respondent- Respondent.

Rajitha Perera DSG for the 2nd Respondent- Respondent.

ARGUED ON : 10.06.2024

WRITTEN SUBMISSIONS : Permit Holder Appellant- Appellant- Appellant on 29.09.2022

1st Objector Respondent Respondents Respondent. on 01.06.2023

2nd Respondent and Incumbent 8B Respondent 24.06.2024

DECIDED ON : 21.03.2025

K. KUMUDINI WICKREMASINGHE, J.

The Appellant-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 Respondent, the Secretary of the Ministry of Environment.

This is an appeal against the decision made by the 6th Respondent of canceling the license granted to the Appellant. The gravamen of the Appellant was that the Respondent, in arriving at his findings, had relied on extraneous material that was not part of the inquiry which was conducted before him and did not allow a fair hearing to the Appellant.

On or around the 2nd June 2010 the 2nd Respondent Authority issued a License bearing No.056193 to the Appellant for gem mining in the land called Kottegewatta and Aswadduma situated in Dewalegama in the District of Ratnapura. A copy of the said Gem License bearing No. 056193 has been marked **P1**. The Appellant states that on receipt of the License the Appellant commenced gem mining in the aforesaid land as he was legally entitled to do. The Appellant states that he duly made all the payments due to the 2nd Respondent Authority. The Appellant specifically stated that there was no failure on his part to comply with any of the terms and conditions of the license.

The Appellant states that on or about 12th September 2010 the Appellant received a copy of a letter dated 09.09.2010 sent by the 3rd Respondent addressed to the 1st Respondent informing them that an inquiry will be held on 13.09.2010 at 11 am in respect of the 1st Respondents objections regarding the issuance of the aforesaid license marked **P2**.

The Appellant states that on 13.09.2010 the Appellant informed the inquiry that he received the aforesaid letter only the day before and requested a postponement. Accordingly, the inquiry was postponed to 17.09.2010. On the same day the Appellant received a telegram from the Manager (Gems) informing that the said License has been suspended until the conclusion of the inquiry and directed the Appellant to handover the said license to the 3rd Respondents office.

On 17.09.2010 parties were represented by Counsel. The Attorneys- at - Law who appeared on behalf of the parties agreed to conclude the inquiry on Written Submissions and further agreed that the documents which the parties were relying on should be exchanged before filing the written submissions. The inquiry was fixed for 01.10.2010 for the purpose of exchanging documents. It was agreed that all documents that the parties are relying on should be filed with their respective Written Submissions and thereafter Counter submissions could be filed but no new documents could be filed with the counter submissions. Accordingly the parties were directed to file the written submissions on 11.10.2010.

On 11.10.2010 both parties filed their written submissions, the Appellant submitted the documents marked X1 to X27 and the 1st Respondent submitted documents marked P1 to P11. Subsequently the Appellant filed his Counter Written Submissions with no new documents as agreed. The 1st Respondent had filed written submissions as well.

However the Appellant was subsequently made aware that the 1st Respondent had submitted new documents with his written submissions contrary to the undertaking given. A copy of the written submissions filed by the Respondent was not served on the Appellant and the Appellant stated that upto now he is unaware of the contents of such documents. The Appellant stated that in the meantime the Appellant made representations to the 5th Respondent and complained to him about the unjust suspension of License and sought relief from him. Subsequently the parties were directed again to appear before the 5th Respondent for an inquiry on 03.11.2010, however the 1st Respondent did not participate nor send a representative.

On 03.11.2010 the 5th Respondent decided to cancel the suspension of the Gem license issued. However on 24.11.2011 the Appellant was handed over a letter dated 24.11.2010 signed by the 5th Respondent stating that the license issued to the Appellant had been revoked. A copy of the letter has been marked **P7**.

The Appellant stated that aggrieved by the decision of the 5th Respondent, the Appellant preferred an appeal to the 6th Respondent in terms of section 15 of the National Gem and Jewellery Authority Act No. 50 of 1993. The Appeal to the 6th Respondent was taken up for inquiry. The Attorneys- at- Law who represented both parties made submissions and at around 4:00PM the inquiry was adjourned for the day. The 6th Respondent indicated that a date for further submissions would be notified. On 30.06.2012 the decision of the 6th Respondent dated 27th June 2012 was communicated to the Appellant, where the 6th Respondent has disallowed the appeal of the Appellant. The decision of the 6th Respondent is marked **P9**.

Aggrieved by which the Appellant has appealed to this court.

Section 15 of the **National Gem and Jewelry Authority Act No.50 of 1993** (the Act) is the applicable law relevant to this case. Section 15 of the Act is set out as follows:

“15. (1) Notwithstanding anything to the contrary in any other written law, the Authority shall be the sole authority responsible for the issue of licences to carry on the gem industry whether such industry is, or is proposed to be, carried on in or over any State or private land.

(2) No person shall carry on the gem industry except under the authority of a licence issued by the Authority.

(3) Every application for a licence to carry on the gem industry shall be made to the Authority in such form as may be prescribed.

(4) (a) No licence shall be issued by the Authority to any person under this Act to carry on the gem industry except upon the payment by such person to the Authority of such fee or fees as may be prescribed.

(b) Every such licence shall

(i) be in the prescribed Form;

(ii) be subject to such terms and conditions as may be prescribed;

(iii) unless it is cancelled earlier, be in force for a period of twelve months from the date of its issue.

(5) Where a licence has been issued to mine for gems or gemming on any paddy land, the cultivator of such land if he is not the owner of such land or the holder of such licence, shall be paid compensation by the owner of such land assessed in such manner as may be prescribed, for loss of income from such paddy land during the period of the licence.

(6) No licence issued under this Act to any person shall be transferable to any other person, and accordingly any such transfer shall be null and void.

(7) The Authority may at any time revoke any licence issued under subsection (2), in the event of any default in the payment of any money payable thereunder or on the failure of the licensee to comply with any of the terms and conditions of the licence.

(8) Where the Authority

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

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

(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), an 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.

(12) The relevant provisions of the Supreme Courts Rules shall apply to an appeal preferred under subsection (11).

(13) Supreme Court may, on an appeal preferred to it under subsection (11)

(a) allow such appeal and direct the Authority to issue or renew the licence which is the subject of that appeal; or

(b) disallow such appeal.

(14) Every lease granted or deemed to have been granted by the State Gem Corporation of the right to mine or gem in any State land or in any land, which has been disposed of by the Corporation with a reservation of mining rights in favour of the State shall, if such lease is in force on the day immediately preceding the appointed date be deemed for all purpose to be a lease granted by the Authority.”

As per section 15(7) of the Act a license can be revoked in two instances, one where there has been a default of money payable or when the conditions on which the license has been granted has been violated.

The Learned Counsel for the Appellant stated that the Appellant has made all payments due to the Respondent Authority. The Counsel further stated that the document marked **P7** seeks to give an answer to the question as to why the Appellants license was canceled so abruptly. Upon the perusal of **P7**, it appears that the document gives out two reasons for the revoking of the license which are;

- (a) On suspicion if causing damage to temple land and public property
- (b) Bringing dishonor to the organisation.

It is important to note that the document marked **P7** does not state either of the two instances set out in section 15(7) of the Act for revoking a license.

It is the Respondents contention that the land in question on which the license was issued is called and identified as “Kottegewatta” which was an extent over 1 acre and 2 roods and was in the estate of late Wijesundara Wickramasinghe Tennakoon Mudali alias Doloswala Adikaram alias Doloswale Disawe and transferred to Palmadulla Temple subsequently as per the terms of the Last Will.

The Respondent further submitted that the Last Will and Testament No.367 dated 01.08.1837 has been proved as a legal document as per the case No. 8700/land which was filed in the District Court of Ratnapura.

Thereafter the land was vested with the Land Reforms Commission as per the prevailing law then and subsequently the Land was divested back to the Palmadulla Temple after making necessary representations to the Land Reforms Commission.

The Respondent stated that the Appellant had consolidated the Kottegewatta alias Aswedduma lands mentioned in the application for mining, the 6th Respondent thereafter held in P9 that the aforesaid land appears to be a Sagarika Property according to the evidence presented.

Upon the perusal of all the documents which the Respondent is relying on in order to prove his title, have been submitted with the further written submissions of the Respondent, violating the agreement that no new documents will be submitted for the inquiry conducted by the 3rd Respondent. These documents have not been served on the Appellant nor had the Appellant allowed an opportunity to address the contents alleged in the aforementioned documents violating the fundamental principles of natural justice. Upon the perusal of P7 it is obvious that the 5th Respondent too has relied on these documents when making his decision to cancel the license issued to the Appellant. Therefore, the veracity of these documents have been considered only at the appeal stage. An appeal aims to affirm, reverse, correct or modify any judgement, decree or order by a court below. It is trite law that no new evidence will be admitted during an appeal stage.

Section 773 of the Civil Procedure Code sets out that,

“Upon hearing the appeal, it shall be competent to the Court of Appeal to affirm, reverse, correct or modify any judgment, decree, or order therein between and as regards the parties, or to give such direction to the Court below, or to order a new trial or a further hearing upon such terms as the Court of Appeal shall think fit, or, if need be, to receive and admit new evidence additional to, or supplementary of, the evidence already taken in the Court of first instance, touching the matters at issue in any original cause, suit or action, as justice may require or to order a new or further trial on the ground of discovery of fresh evidence subsequent to the trial”

Ramasamy v. Fonseka [1958] 62 N.L.R. 90 where Weerasooriya J. held that, *“fresh evidence would not be permitted to be adduced in appeal unless it is of a decisive nature; it must be such that, on a new trial being ordered, it would almost prove that an erroneous decision had been given.”*

In **Ladd v. Marshall [1954] 3 All E.R. at 748**, Denning, L.J. held, *“In order to justify the reception of fresh evidence or a new trial, three conditions must be fulfilled:*

- 1. first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial:*
- 2. second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive:*
- 3. third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible”.*

These conditions were taken into account and applied in the case **Ratwatte v Bandara [1966] 70 N.L.R. 231**.

It is quite obvious that the documents submitted by the Respondent do not satisfy either of the conditions set out in the above case law and thereby should not be considered.

Further, the Appellants license has been suspended prior to a proper inquiry. Each person should be given an equal opportunity to present their case. This is a fundamental right guaranteed under article 13 of the Constitution of Sri Lanka.

When considering the rules of natural justice; one must consider the rule *Audi Alteram Partem* (Right to be Heard): This rule ensures that all parties involved in a dispute have the opportunity to present their case. The rule *Nemo Judex in Causa Sua* (Rule Against Bias): This rule ensures that decisions are made by impartial and unbiased authorities. It means that no person should be a judge in their own case.

In *Karunadasa v Unique Gem Stones Ltd; and Others* [1997] 1 SLR 256, The Supreme Court having held; “*To say that Natural Justice entitles a party to a hearing, does not mean merely that his evidence and submissions must be heard and recorded; it necessarily means that he is entitled to a reasoned consideration of the case which he presents. And whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial review commences, the decision "may be condemned as arbitrary and unreasonable"; certainly, the Court cannot be asked to presume that they were valid reasons, for that would be to surrender its discretion. The 2nd respondent's failure to produce the 3rd respondent's recommendation thus justified the conclusion that there were no valid reasons, and that Natural Justice had not been observed*”.

Lord Diplock in the case of *O'Reilly v. Mackman* [1983] 2 AC 237 at 276 held that “*the right of a man to be given a fair opportunity of hearing what is alleged against him and of presenting his own case is so fundamental to any civilized legal system that it is to be presumed that Parliament intended that a failure to observe it should render null and void any decision reached in breach of this requirement*”.

As Dr. Sunil Cooray points out [**Principles of Administrative Law in Sri Lanka 4th 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’.*”

In the recent judgement [*SC Appeal (Miscellaneous) No. 04/2012*] decided on 11th July 2024, Justice Yasantha Kodagoda PC held that “*it would be seen that the common law recognises the principle that a statutory authority which is empowered by law to issue a licence authorising the conduct of any matter which comes within the purview of such licensing authority's mandate, is possessed with inherent power to withdraw or cancel such licence (following its issuance) for valid reasons, including in particular, upon satisfaction after inquiry, that (i) it (the statutory authority) had been misled by the applicant to believe that the applicant was entitled to the licence applied*

for, (ii) the applicant had acted fraudulently in obtaining the licence, or (iii) the applicant had acted in breach of the terms and conditions of such licence. However, an enabling statute can negative such inherent power, through specific provision. It is necessary to emphasise that such inherent power is not unlimited, should be exercised in good faith, with due diligence, for good reasons, and above all in compliance with the rules of natural justice”

As such, the licensing authority may step beyond the scenario’s set out in section 15(7) of the Act when suspending/revoking a license, provided such powers are exercised with compliance of the rules of natural justice. The rules of natural justice maintain that all parties must be heard before a decision is made. Since such an opportunity has not been given to the Appellant in this case the above mentioned inherent powers of the authority would not apply to this case.

Based on the above, I am of the view that the rules of natural justice required the Secretary to afford an opportunity to the Appellant present his case entirely and to pursue and respond to the impugned documents if the Secretary were to act on it, which the Secretary did not do.

I find the Secretary fell into error when he decided to act on the contents of the documents submitted during the appeal stage 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 to the Ministry of Environment [6th Respondent] **P9 and P9a** dated 27.06.2012 as well as the decision of the Chairman of the National Gem and Jewellery Authority [5th Respondent] **P7** are hereby quashed.

Appeal allowed without costs.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I had the benefit of reading in draft the initial judgment proposed to be delivered by my learned sister Wickremasinghe, J. wherein the decision of the 6th Respondent-Respondent [P9] was to be quashed. The decision made by the 5th Respondent-Respondent (P7) was not set aside. The 6th Respondent-Respondent was directed to make a fresh determination.

However, I took the view that both the decisions made in appeal (P9) as well as the decision made by the 5th Respondent-Respondent (P7) must be set aside. Accordingly, my dissenting judgment was prepared and circulated to both my learned sisters. My learned sister (as she was then) Fernando, J. agreed with the judgment I proposed to deliver.

Thereafter, my learned sister Wickremasinghe, J. amended her draft judgment and decided to set aside both the decisions made in appeal (P9) as well as the decision made by the 5th Respondent-Respondent (P7) as proposed by me.

However, since I had prepared this judgement in detail, I will proceed to deliver it. The facts are outlined only to the extent necessary since my learned sister Wickremasinghe, J. has set out them in some detail.

In *Karangoda and Another v. National Gem and Jewellery Authority and Others* [S.C. Miscellaneous 02/2016, S.C.M. 26.07.2024] I had the occasion to examine one aspect of the procedure relating to the issue and cancellation of gem mining licences under the National Gem and Jewellery Authority Act No, 50 of 1993 (“Act”). As explained therein, the 2nd Respondent-Respondent has been empowered by Section 15 of the Act to issue gem mining licences. These licences can be issued in conformity with the State Gem Corporation By-laws, No. 1 of 1971 (“By-law”) which have been kept alive by Section 54 (2)(h) of the Act.

According to By-Law 8 (2), no licence shall be granted to any person unless (a) he himself owns the land or (b) he has obtained the consent of so many of the other owners as to ensure that the applicant and such other consenting owners together own at least two-thirds of the land in respect of which the application has been made.

By-law 2(2) requires every application for a Gemming Licence to be substantially in the form set out in the First Schedule thereto. It requires the applicant to provide inter alia nature of title or claim to the land, proportion of the land claimed, names and addresses of co-owners or other believed by the applicant to have or claiming to have an interest in the land and whether the land belong to the Crown.

A gemming licence is issued in the form of the Second Schedule to the By-law. The terms and conditions subject to which it is issued is set out on the reverse of the licence. Clause 17 therein specifies the following Special Condition:

“DECLARATION

“I, hereby declare that all the statements and representations made by me and by my agent are correct and I further declare that I shall observe all the terms and conditions upon which this licence has been issued. I agree that this licence may be cancelled if any of the statements and representations made by me or my agent are untrue or, if in the opinion of the General Manager of the State Gem Corporation, I have failed to observe any of the terms and conditions, upon which the licence has been issued.

Date:

.....
Signature of the Licensee”

Accordingly, one of the special conditions of a Gemming Licence is that all the statements and representations made by the applicant and by his agent about the nature of title or claim to the land are correct. Where such statement or representation is incorrect, it amounts to a breach of the conditions of the licence.

To this extent I am in respectful agreement with the analysis in *Dumindarathna and Others v. Ven. Bangamuwe Dhammadinna Thero and Others* [S.C. (Miscellaneous) No. 04/2012, S.C.M. 11.07.2024]. The point of my departure from the decision in *Dumindarathna and Others (supra.)* is that where there are such untrue statements or false representations, they come within Section 15(7) of the Act and does not provide an independent ground for revocation of a Gemming Licence.

In this matter, P1 is not the full copy of the licence issued to the Permit Holder-Appellant-Appellant (“Appellant”). However, in terms of Section 114(d) of the Evidence Ordinance, Court may presume that official acts have been regularly performed. There is no allegation that the Gemming Licence was issued to the Appellant without imposing the generally applicable statutory terms and conditions. Hence, it can safely be presumed that the terms and conditions of P1 are the same as the terms and conditions in the Second Schedule to the By-law.

Section 15(7) of the Act empowers the 2nd Respondent-Respondent to revoke any licence issued, at any time in the event of any default in the payment of any money payable thereunder or on the failure of the licensee to comply with any terms and conditions of the licence. Hence the Gemming Licence issued to the Appellant can be revoked should he have made any incorrect statement on the title claimed to the corpus.

In this matter, the Permit Holder-Appellant-Appellant was issued a Gemming Licence [P1]. A few months later, the Objector-Respondent-Respondent (“Respondent”) objected to the gemming licence issued to the Appellant on the basis that the corpus was Sangika property belonging to the Palmadulla Raja Maha Viharaya. It was further alleged that there was a dispute as to the identity of the corpus.

Therefore, the 2nd Respondent was entitled to conduct an inquiry into the complaint made in order to ascertain the veracity of the complaint.

Section 15(7) of the Act does not specify the procedure to be followed in revoking the licence. However, revocation impinges on a right granted to a licensee and must necessary be preceded by a fair hearing. As Singh LJ held in *R (Citizens UK) v. SSHD* [(2018) EWCA Civ 1812 (2018) 4 WLR 123 at §68]:

“[...] the duty to act fairly or the requirements of procedural fairness ... will readily be implied into a statutory framework even when the legislation is silent and does not expressly require any particular procedure to be followed.”

The justification generally made in contemporary academic discourse for a fair hearing is founded upon instrumental and non-instrumental argumentation. The instrumental argumentation underlines the connection between fair hearing and the substantive justice of the final conclusion. Substantive rules are aimed to attain a specific result. Providing a fair hearing before a decision assist in ensuring that this principle is correctly applied. The non-instrumental justification for a fair hearing is constructed on the allegiance to the rule of law, assuring impartiality and upholding human dignity.

While the rationale for a fair hearing is somewhat readily discernible, the content of a fair hearing is not so given the disparate types of cases that may arise in administrative law. A broad spectrum of procedural requirements is available in the basket of a fair hearing including due notice of the charges, right to respond, oral or written hearing, discovery of documents, legal representation, right to cross-examination and reasons for the final decision.

As Tucker LJ expounded in ***Russell v. Duke of Norfolk and Others* [(1949) 1 All ER 109 at 118]**:

"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

The exact scope of a fair hearing depends on the circumstances of each case such as the character of the decision-making body, the types of decisions to be made and the statutory framework which guides the decision-making body. In the absence of statutory guidance, Court will seek assistance from common law principles.

As Lord Morris alluded to in ***Wiseman and Another v. Borneman and Others* [(1971) AC 297, 308H-309B]**:

"We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to their application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only "fair play in action". Nor do we wait for directions from Parliament. The common law has abundant riches:..."

Although the content of a fair hearing depends on the facts and circumstances of each case, there are certain integral elements that form the core of any fair hearing. It is not my intention to lay down an exhaustive list of the core elements of a fair hearing. Nevertheless, the notice of the complaint against the party and a reasonable opportunity to respond form an integral part of any fair hearing. As Lord Mustill held in ***Regina v. Secretary of State for the Home Department, Ex parte Doody*** [(1994) 1 A.C. 531 at 560D-G]:

*“[...] (2) The standards of fairness are not immutable. They may change with the passage of time, both in general and in their application to decisions of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal administrative system within which the decision is taken. (5) **Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken with a view to procuring its modification; or both.** (6) **Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interest’s fairness will very often require that he is informed of the gist of the case which he has to answer.**” (emphasis added)*

This was quoted with approval and applied in ***Bank Mellat v. Her Majesty’s Treasury (No. 2)*** [(2013 UKSC 39) (2014 A.C. 700 at § 30 (Lord Sumpton))].

Moreover, one of the fundamental norms of a fair hearing is that a party must be provided with notice of all documents which are presented to the decision maker for his consideration in making the relevant determination.

In ***re A (Family Proceedings: Disclosure)*** [(2012) UKSC 60, (2013) 2 AC 66 at §20] Lady Hale held that it is a fundamental principle of fairness that a party is entitled to the disclosure of all materials which may be taken into account by [a] court when reaching a decision adverse to that party. In ***R (Primary Health Investment Properties Ltd.) V. Secretary of State for Health*** [(2009) EWHC 519 (Admin), (2009) PTSR 1563 at §120] McCombe, J. held that elementary fairness in any decision-making process requires that the parties should have seen all the documents in the case that are presented to the decision-maker and/or any adviser that the decision-maker may consult.

2nd Respondent-Respondent appointed the 3rd Respondent-Respondent to conduct the inquiry into the complaint made by the Respondent. According to the Appellant, it was agreed between the parties that all documents the parties were relying on should be filed with their respective written submissions and that thereafter counter submissions could be filed but no new documents could be

filed with the counter submissions. The Appellant contends that the Respondent had tendered fresh documents with his counter submissions contrary to the agreed procedure. The record confirms this position.

Moreover, the letter dated 23.02.2012 sent by the 6th Respondent-Respondent to the 2nd Respondent-Respondent confirms the complaint made by the Appellant that two fresh documents had been tendered by the Respondent.

While the decision on the inquiry conducted by the 3rd Respondent-Respondent was pending, it appears that the Respondent had addressed a letter dated 11.11.2010 to the 5th Respondent-Respondent, who was the then Chairman of the 2nd Respondent-Respondent. The Respondent had also addressed a letter dated 04.11.2010 to H.E. the President with copies to Hon. Anura Priyadharshana Yapa, Minister of Environment and the 5th Respondent-Respondent. Thereafter, the 5th Respondent-Respondent issued the letter dated 24.11.2010 (P7) cancelling the Gemming Licence (P1) issued to the Appellant.

In this context, I am constrained to observe that the 5th Respondent-Respondent had copied the letter dated 24.11.2010 (P7) to, inter alia, H.E. the President, Hon. Prime Minister, Hon. Minister of Economic Affairs, Hon. Minister of Environment, Hon. Minister of Public Administration and Home Affairs, and several others. Whilst the inclusion of some of the recipients can be understood based on the previous communication, only the 5th Respondent-Respondent may know the reasons for copying this letter to the others.

The procedure followed by the 5th Respondent-Respondent in cancelling the Gemming Licence (P1) is contrary to certain fundamental norms of a fair hearing.

Furthermore, the 3rd Respondent-Respondent had not made a determination on the inquiry conducted by him. The 5th Respondent-Respondent did not have any authority to conduct another inquiry whilst such determination was pending.

The Appellant made an appeal to the 6th Respondent-Respondent against the said decision in terms of Section 15(8) of the Act. At the beginning of the inquiry, the Appellant drew the attention of the 6th Respondent-Respondent to the fact that fresh evidence had been tendered to the 3rd Respondent-Respondent contrary to the agreed procedure. Nevertheless, the 6th Respondent-Respondent went on to consider all material and concluded that the corpus was Sangika property as claimed by the Respondent.

In *Sarath Kumara v. National Gem and Jewellery Authority and Others* [S.C. Miscellaneous 02/2013, 20.09.2023 at para. 16] Aluwihare, J. held that in reviewing a decision of National Gem and Jewellery Authority, the Secretary may permit the parties to make representations 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 but that in exceptional situations, he, may permit fresh material.

No exceptional circumstances were set out for having considered material submitted after the parties were heard in this case. They were tendered at the end of the inquiry conducted by the 3rd Respondent-Respondent contrary to certain fundamental norms of the rules of natural justice.

The 6th Respondent-Respondent acted contrary to the rules of natural justice in considering such documents in appeal.

For all the foregoing reasons, I set aside both the decisions made in appeal (P9) as well as the decision made by the 5th Respondent-Respondent (P7).

The appeal is allowed.

Parties shall bear their costs.

JUDGE OF THE SUPREME COURT

Murdu N.B. Fernando P.C.,CJ.

I had the benefit of perusing the initial draft judgement of Wickramasinghe, J. and the circulated dissenting judgment of de Silva, J.

Having gone over the two draft judgements, I was in agreement with the dissenting judgement, since by the said judgement the initial decision of the 5th Respondent **P7** and the decision in appeal of the 6th Respondent **P9** were both set aside for reasons carefully considered and dealt in the dissenting judgement of de Silva, J., whereas in the judgement of Wickramasinghe, J. only the decision in appeal **P9** was set aside.

By the judgement circulated for my signature, it is observed that Wickramasinghe, J. had varied her stance and has now determined that both impugned decisions should be set aside.

Having considered the facts and circumstances and the legal provisions relating to this appeal, I am in agreement with the judgements of Wickramasinghe J. and de Silva J. that the 5th Respondent- the then Chairman of the National Gem and Jewellery Authority, acted contrary to the fundamental norms of a fair hearing in cancelling the Gem License issued to the Appellant-Permit Holder and that the 6th Respondent- the Secretary to the Ministry of Environment also acted contrary to the rules of natural justice in determining the appeal of the Appellant-Permit Holder.

For the aforesaid reason and in view of the legal provisions more fully discussed in the two judgements, I am in agreement that the impugned decisions- **P7** and **P9**, should be set aside and the appeal of the Appellant-Permit Holder be allowed.

The Appeal is allowed.

CHIEF JUSTICE