

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

S.C (FR) No. 04/2016

In the matter of an Application under
Article 17 read with Article 126 of the
Constitution

1. Environmental Foundation (Guarantee)
Limited
No. 146/34, Havelock Road,
Colombo 5.
2. Wildlife and Nature Protection Society
of Sri Lanka
No. 86, Rajamalwatte Road,
Battaramulla.
3. L. J. Mendis Wickramasinghe
31/5, Alwis Town, Hendala,
Wattala.

PETITIONERS

Vs.

1. A. Sathurusinghe
Conservator General of Forests
Department of Forest,
No. 82, Rajamalwatte,
Battaramulla.
2. Central Environmental Authority
"Parisara Piyasa"
Rajamalwatte,
Battaramulla.

3. K. P. Welikannage
Director-Central Environmental
Authority
Sabaragamuwa Provincial Office,
No. 27, Vidyala Mawatha,
Kegalle.
4. G. D. L. Udaya Kumari
Divisional Secretary
Divisional Secretariat
Kalawana.
5. Hon. Minister of Mahaweli Development
and Environment
Ministry of Mahaweli Development and
Environment
No. 55, T. B. Jaya Mawatha,
Colombo 10.
6. Ceylon Electricity Board
Sir Chiththampalam A. Gardiner
Mawatha,
P.O. Box 50,
Colombo 02.
7. Director General
Department of Irrigation
P. O. Box 1138,
230, Baudhaloka Mawatha,
Colombon7.
8. Commissioner General
Land Commissioner General's
Department
"Mihikatha Madura"
Land Secretariat,
12006, Rajamalwatta Road,
Battaramulla.
9. Public Utilities Commission of Sri Lanka
6th Floor, B.O.C. Merchant Tower
St. Michael's Road,
Colombo 3.

10. Waste Management Water Power (Pvt)
No. 115, Pirivena Road,
Boralesgamuwa.

11. Dhammika Wijesinghe
Secretary General
Sri Lanka National Commission for
UNESCO
Ministry of Education
5th Floor, "Isurupaya",
Battaramulla.

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

RESPONDENTS

BEFORE: Priyasath Dep P.C., C.J.
S.E. Wanasundera P.C., J. &
Anil Gooneratne J.

COUNSEL: Uditha Egalahewa P.C. with Vishva Vimukthi and
N.K. Ashokbharan for the Petitioners

Manohara de Sivla P.C. for the 10th Respondent

Viraj Dayaratne Senior D.S.G for the
2nd, 3rd, 6th, 9th & 12th Respondents

ARGUED ON: 09.02.2017

DECIDED ON: 29.05.2017

GOONERATNE J.

This is a Fundamental Rights Application filed by the Environmental Foundation (Guarantee) Limited and two other parties on 08.01.2015, mainly alleging that Petitioners' rights guaranteed under Articles 12(1) and or 14(1)(g) have been infringed by the Respondents. Petitioners claim several reliefs in their petition and allege that the contracts entered and or permission granted and or certificates issued by the 1st to 10th Respondents in pursuance of the development/implementation of a Mini Hydro Project described in P9, P10, P10(a), P12, P13, P14, P15 and P18 are illegal/null and void and of no force in law.

When this matter was taken up for support for leave to proceed and for interim relief on 03.02.2016, the 10th Respondent raised three preliminary objections regarding the maintainability of the application based on the following grounds.

- (a) The affidavits of the Petitioners have been attested by the Attorney-at-Law appearing on behalf of the Petitioners in contravention of the proviso to Section 12(2) of the Oaths and Affirmation Ordinance.
- (b) Petitioners' application is time barred.
- (c) Petitioners have failed to name the 5th, 7th and 8th Respondents in person and it contravenes Rule 44(1) (b) of the Supreme Court Rules.

The other Respondents to this application also associated themselves with the above objections of the 10th Respondent and supported the objections so raised. All parties made oral and documentary submissions before this court, concerning the said objections.

In the submissions made on behalf of the Petitioners it is admitted that the affidavit tendered along with the petition of the Petitioners had been inadvertently attested by the same attorney on record for the Petitioner at the time of filing this application. It is one Ms. Danushka Ranasinghe Attorney at Law, the Attorney on record or the registered Attorney as appearing in the proxy of 08.01.2016. Subsequently the Attorney on record for the Petitioner was changed by revocation of proxy on or about 26.01.2016 and new proxy of Petitioners was filed by one Ms. Gayani Hewawasam, Attorney at Law. Petitioner argue that the defect in the procedure has been cured. Is it a curable defect?

I do agree that the defect in the procedure had been cured by the Petitioners, before the application was to be supported. New proxy had been filed on or about 26th January as submitted on behalf of the Petitioner. As such a mistake could be cured, as opposed to negligence. In this regard I have considered the case of *Ajith A.J. Silva Vs. Y.M. Aleckman* S.C. Application 46/5 decided on 05.07.2013 Judgement of *Thilakawardena J.* and the case of

Senanayake Vs. Commissioner of National Housing and Others 2005 (1) SLR 182

“court should not non-suit a party where non-compliance with the rules takes place due to no fault of the party”. The mere mistake has been cured as such the Petitioner should not be made to suffer.

In the above circumstances I do not think the objection raised as above (a) could be maintained and no prejudice would be caused to any other party when a defect had been rectified.

The other objection raised in this application concerns time bar. I note that the petition in this application was filed on 08.01.2016, and the prayer to the petition would mainly concern the relief prayed for in subparagraphs (c), (d) and (e) of the prayer. By the said prayers, petitioner seeks the quashing of documents P9, P10, P10(c), P12, P13, P14, P15 and P18.

P9 is the Environmental Licence issued by the 2nd Respondent Authority to the 10th Respondent on 06.02.2012. I do agree that there is a lapse of about 3 years. If it was a delay of a few months Petitioners’ explanation would be justified.

P10 is the annual State land permit issued to the 10th Respondent on 05.11.2014. Issued 1 year prior to filing of the present application. P12 is the no objection letter issued to the 10th Respondent by the 1st Respondent, on 08.08.2012. Issued 3 ½ year prior to filing the present application. P13 is a letter

issued by the Land Commissioner in January 2014 to Divisional Secretary to provide State land to the 10th Respondent. Issued 2 years prior to filing the present application. P14 is an approval granted to the 10th Respondent by the Irrigation Department, on 05.10.2010 (delay of 6 years) P15 is the Electricity Generation Licence issued to 10th Respondent by the 9th Respondent (6 months delay). P18 is the standard power purchase agreement entered into between 6th Respondent and 10th Respondent on 30.06.2014 (1 ½ years delay).

There is an explanation by the Petitioner to meet the position of delay by the Petitioner in the application filed in this court as in paragraphs 9, 10 and 11 of the petition. Whatever it may be I am not inclined to accept such an explanation when one peruse the entirety of the petition. Inordinate delays could be identified and the 10th Respondent has correctly considered same in his written submissions. As such I take the view that the Petitioners are not entitled to time extension as in the case of *Gamethige Vs. Siriwardena 1988 (1) SLR 384*. Petitioners being involved in environmental issues has to be vigilant as it is the primary concern of the Petitioners. If any damage is caused due to the project itself those matters may be urged but quashing of the above documents would not be justified in law, with delays demonstrated above.

The time limit in Article 126(2) of the Constitution should be strictly interpreted. The project may be on the border line of the Singharajah Forest or

its boundary. A party should be more careful and vigilant and this being public interest litigation, explain the importance to file this application within time as required by law. Further this court need also to pronounce on infringements of those who are named in the petition. However in view of the fact that this application has been filed out of time I do not wish to deal with the objection on contravention of Rule 44 (1) (b) of the Supreme Court Rules. I uphold the preliminary objection on time bar, and proceed to dismiss this application without costs.

Application dismissed.

JUDGE OF THE SUPREME COURT

Priyasath Dep P.C., C.J.

I agree

Chief Justice

S.E. Wanasundera P.C., J.

I agree.

JUDGE OF THE SUPREME COURT