

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

In the matter of an application for mandates
in the Nature of Writs of Certiorari and
Mandamus under and in terms of Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Ariyadasa Bandarigoda
"Asiri Communication"
Waduveliwitiya North
Kahaduwa.

Plaintiff

C.A. (Writ) Application No. 444/11

Vs

1. Ceylon Electricity Board
Chitthampalam Gardiner Mw,
Colombo 02.
2. Dr. Wimaladharma
The Chairman
Ceylon Electricity Board
Colombo 02.
3. General Manager
Ceylon Electricity Board
Colombo 02.

4. Electrical Engineer
Ceylon Electricity Board
11, Mahavihara Road
Ambalangoda.
5. Mr. Indika
Electrical Superintendent
Ceylon Electricity Board
Niyagama, Thalgaswala.
6. D. Kusalani De Silva
Divisional Secretary
Divisional Secretariat
Weliwetiya, Divithura
Agaliya.
7. Public Utilities Commission
BOC Mercantile
28, St. Michel Road
Colombo 03.
8. Dr. Jayatissa De Costha
Public Utilities Commission
BOC Mercantile
28, St. Michel Road
Colombo 03.
9. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents.

BEFORE

: Deepali Wijesundera J.

: M.M.A. Gaffoor, J

COUNSEL

: Mahinda Nanayakkara with
A. Jayathilake for the Petitioner
Chaya Sri Nammuni SC for the
Respondents.

ARGUED ON

: 13th November, 2014

DECIDED ON

: 03rd December, 2015

Deepali Wijesundera J.

The petitioner has filed the instant application seeking a writ of certiorari and a writ of Mandamus to prevent the drawing of electricity lines along the Western boundary of the petitioner's land and also to remove the lines already drawn in spite of his objections.

A group of officers from the Ceylon Electricity Board has gone to survey and inspect the petitioner's land to extend the electricity supply line across his land and a letter had been sent to him directing him to

submit any objections. The petitioner has made his objections to the sixth respondent – Divisional Secretary. Thereafter the sixth respondent has given instructions to the fifth respondent by letter marked as **P7** to install the electricity lines along his southern boundary and also by **P10** along his northern boundary to give electricity to two houses. The petitioner is canvassing two decisions of the sixth respondent contained in document marked **P7** dated 26/03/2009 and the decision contained in the document marked **P10** dated 24/10/2009. **P7** was sent under *Act No. 17 of 1969* and **P10** under *Act No. 20 of 2009*. The earlier Act was repealed by the new Act.

The petitioners stated that the inquiry on the first document was not properly conducted. Petitioner submitted that the alternate route shown by him was not considered by the sixth respondent who acted maliciously and that his land on two sides had electricity lines drawn making it difficult for him to utilize the land.

The petitioner submitted the decision in **P10** is governed by *Act No. 20 of 2009* and the Sixth respondent had no authority to either conduct an inquiry or make a decision under the said Act. He further stated that the decision making power lies with the seventh respondent

and the sixth respondent is only empowered to make inquiries regarding the objections relating to the acquisition of the way to supply electricity.

The respondents stated that the petitioner has waited several years to file action against P7 and that this application should be dismissed on the ground of delay. He also stated that there is no damage or harm caused to the petitioner by the decision taken in P7 therefore a writ of certiorari should not be issued.

The respondents submitted that the petitioner willingly gave his consent to the drawing of electricity line mentioned in P10. The respondents stated that from a practical point of view this application should not be allowed since the electricity lines have already been drawn and power given to the consumers.

The respondents on the objection taken by the petitioner on not following the provisions of the *Electricity Act No. 9 of 2009* stated since the new laws were not known by many of the Divisional Secretaries at the relevant time the new procedures were not followed by them.

The respondents citing the judgments in **A.G. Peiris vs Gunasekera and another 66 NLR 498** and **Credit Information Bureau of Sri Lanka vs Jafferjee and Jafferjee (Pvt) Ltd 2004 BLR** stated that a writ of Mandamus should not be issued. These two judgments are not relevant to the present application.

On the own admission of the counsel for the respondents the sixth respondent has not followed the proper legal procedure laid down in the *Act No. 9 of 2009*. By this Act the sixth respondent is only empowered to make inquiries relating to objections and the decision making power lies with the seventh respondent. *Public Utilities Commission. Sec. 64 of Sri Lanka Electricity Act No. 20 of 2009* states;

“Notwithstanding the provisions of the Ceylon Electricity Board Act No. 17 of 1969, where there is a conflict between any regulation made under section 56 of that Act and any provisions of this Act or any regulations made thereunder, the provisions of this Act and the regulations made thereunder, shall prevail.”

Therefore the provisions of the new Act shall prevail by not knowing the new Act the respondents can not breach the rights of the public.

Sec. 4 (1) (e) of the Act states;

“To protect the public from dangers arising from the generation, transmission, distribution, supply or use of electricity.”

The purpose of appointing such a commission is to protect the general public and the consumer, therefore the proper procedure should be adopted, at all times.

Sec. 39 (1) (b) of the Act states;

(1) The following disputes arising in connection with the supply or use of electricity shall be referred to the Commission by any party to the dispute.

(b) Any dispute (other than a dispute referred to in paragraph

(a) Between a licensee and,

(i) a tariff customer

(ii) another licensee, or

(iii) any other affected party

These sections very clearly state how a dispute should be resolved. The respondents having failed to follow the correct procedure is now making lame excuses.

The respondents stated that the petitioner has waited several years to challenge **P7 and P10** which I find is not correct. The petitioner has filed a writ application No. 447/2010 and withdrawn it reserving the right to file a fresh application. Therefore the argument of the respondents on delay fails.

The learned state counsel stated that the petitioner had already given his consent with regard to the drawing of electricity lines referred to in **P10** which is not correct the learned State Counsel has tried to twist the circumstances and mislead court. The State Counsel further stated that issuing a writ will be futile since the lines have already been drawn. The petitioner has shown an alternative route to draw the electricity lines to the sixth respondent who has rejected it stating it was costlier, the sixth respondent who had no authority to do so has taken a decision without putting it to the seventh respondent. If the rights of a party are affected by the Acts of the respondents it should be rectified. The sixth respondent when making the decision in **P7** has acted

maliciously and P10 was made without having authority which makes P10 null and void.

For the afore stated reason I decide to allow the application of the petitioner as prayed for in prayer B and C of the petition.

JUDGE OF THE COURT OF APPEAL

M.M.A. Gaffoor J.

I agree

JUDGE OF THE COURT OF APPEAL