

GUNARATNE
v.
THE HOMAGAMA PRADESHIYA SABHA AND OTHERS

SUPREME COURT
AMERASINGHE, J.,
PERERA, J.,
GUNAWARDENE, J.
SC APPLICATION NO. 210/97(FR)
MARCH 04, 1998.

Environment Law – National Environmental Act, No. 47 of 1980 as amended by Act, No. 56 of 1988 – Establishment of a Saw Mill – Nuisance – Environmental hazards : noise, saw dust, etc. – Permission by Pradeshiya Sabha – Licence under National Environmental Act – Infringement of Fundamental Rights – Article 12(1) of the Constitution.

An application by the petitioner to establish a Saw Mill was recommended by the Technical Officer of the Pradeshiya Sabha but the Central Environmental Authority (CEA) refused to approve the application without adducing any reasons. The petitioner appealed to the Minister who directed the officers of the CEA to consider the application on its merits. The CEA wrote to the Pradeshiya Sabha that it had no objection subject to the following conditions:

1. Noise should not exceed 55 decibels prescribed under the Environmental Act.
2. The operation should not be conducted between 6.00 p.m. and 6.00 a.m.
3. A report from the Ceylon Institute for Scientific and Industrial Research (CISIR) regarding compliance with conditions relating to noise levels should be obtained.
4. Saw dust and other dust particles should not be a hindrance to the members of the community living in the vicinity.

The letter of CEA was considered by the Pradeshiya Sabha at a meeting and unanimously approved provided an Environmental Protection Licence was obtained before commencement of operations. The decision of the Pradeshiya Sabha was communicated to the petitioner laying down the conditions laid down by the CEA and a further set of 7 conditions prescribed by the Pradeshiya Sabha. The petitioner then began preparations. However while preparations were going on the petitioner received a letter from the Chairman of the Pradeshiya Sabha informing him that the CEA had informed it of its decision not to recommend the petitioner's industry and that the Pradeshiya Sabha had requested clarification from the CEA. The petitioner was directed to temporarily suspend preparations. An application was made to the Supreme Court for infringement of Fundamental Rights and a settlement was about to be entered when the 7th to 10th respondents intervened and objected to the settlement on the following grounds :

- (1) Noise emitted by operation of the machinery, unloading of logs, etc., will create a nuisance and will adversely impact on the place and quiet hitherto enjoyed by them.
- (2) Health hazards would be caused by the saw dust.
- (3) The road would be obstructed by vehicles bringing raw materials.
- (4) The mill would disturb the calm and peaceful environment of a residential area.
- (5) Establishment of a Saw Mill would violate the provisions of the National Environmental Act and other public health and building regulations.

Held:

1. The stage at which the complaint was made was the site clearance stage. It is the stage at which an industrialist is granted or refused permission to begin preparation for setting up his operations. Obtaining permission at that stage does not constitute the granting of a licence.

2. A petitioner who receives a favourable response to a site clearing application must comply with the terms and conditions upon which such clearance is granted.

3. No operations can commence until the petitioner has obtained a licence issued under Part IV A of the National Environmental Act.

4. The Central Environmental Authority and delegate institutions like the Pradeshiya Sabha should hear neighbourhood objections, inform the industrialist of the objections, hear the views of the industrialist, and after weighing the evidence in the light of the submissions made by both sides, decide for reasons stated in writing and no other, that the licence will be granted or refused. The decision and reasons should be communicated to the industrialist and the persons who raised objections.

Per Amerasinghe, J.

"Publicity, transparency and fairness are essential if the goal of sustainable development is to be achieved. In the matter before us, none of these elements were present . . ."

APPLICATION for relief for alleged violation of fundamental rights.

Tilak Marapone with Nalin Ladduwahetty, Jayantha Fernando and Anuja Premaratne for petitioner.

Manohara R. de Silva for 1st respondent.

K. C. Kamalabeyson, ASG with N. Pulle for 2nd to 6th respondents.

Lalanath de Silva with Mihiri Gunawardene for 7th to 10th respondents.

Cur. adv. vult.

April 03, 1998

AMERASINGHE, J.

The petitioner made an application to the Homagama Pradeshiya Sabha for the purpose of establishing a saw mill at Kandalanda. This application was referred to the Central Environmental Authority by the Pradeshiya Sabha. The site was visited by the Technical Officer of the Pradeshiya Sabha. The officer recommended the petitioner's application. The matter was then referred to the Central Environmental Authority which, without adducing any reason, refused to approve the application. The petitioner then appealed to the Minister in charge of the subject of Environment. The Minister directed the officers of the Central Environmental Authority to consider the application on its merits. The Central Environmental Authority then wrote to the Pradeshiya Sabha stating that it had no objection to the siting of the proposed Saw Mill at the place proposed, subject to certain conditions being complied with, namely:

1. that the proposed operations of the saw mill should not discharge noise levels above the 55 decibel limits prescribed under the provisions of the Environmental Act;
2. that the operation should not be carried on between 6 p.m. and 6 a.m.;
3. that a report, once in three months from the Ceylon Institute for Scientific and Industrial Research should be submitted with regard to compliance with the conditions relating to noise levels;
4. that saw dust and other dust particles emanating from the saw mill should not be a hindrance to the members of the community living in the vicinity of the proposed saw mill.

The letter of the Central Environmental Authority was placed for consideration at a meeting of the Pradeshiya Sabha which unanimously decided to grant the petitioner permission to proceed with the preparations to set up the mill provided that an Environmental Protection Licence would be obtained before the commencement of the operations. The decision of the Pradeshiya Sabha was communicated to the petitioner laying down the conditions stipulated by the Central Environmental Authority and a further set of 7 conditions prescribed by the Pradeshiya Sabha.

The petitioner then proceeded to prepare the premises by clearing the site, erecting a boundary wall and obtaining an electricity service connection. While preparations were going on, the petitioner received a letter from the Chairman of the Pradeshiya Sabha informing him that the Central Environmental Authority had informed the Pradeshiya Sabha of its decision not to recommend the petitioner's industry, but that the Pradeshiya Sabha had written to the Central Environmental Authority seeking clarification on the matter. The petitioner was directed to temporarily suspend preparations. The petitioner then appealed to the Minister in charge of the subject of environment and he was directed to meet the Director-General of the Central Environmental Authority and make representations to him. The Director-General informed the petitioner that he had been informed that the proposed industry would be a nuisance to the public in the area and, therefore, the authorization initially given was withdrawn.

The petitioner then filed an application in this Court on 28th February, 1997, alleging that the respondents had violated his fundamental rights guaranteed under Article 12 (1) of the Constitution and praying, *inter alia*, that the Court make order quashing the letter dated 27.1.97 issued by the Pradeshiya Sabha suspending the authorization earlier given by the Pradeshiya Sabha to the petitioner.

When the matter came up for support on 17 March, 1997, the Court observed that all counsel agreed that the petitioner may proceed to establish his Saw Mill on the premises referred to in paragraph 8 of the petition subject to the terms and conditions set out in letter P5 issued by the first respondent (the Homagama Pradeshiya Sabha) and subject to any other statutory conditions applicable under the National Environmental Act, No. 47 of 1980, as amended by Act No. 56 of 1988, and subject to the right of the fifth respondent (The Central Environmental Authority) to conduct all necessary tests and investigations to be satisfied that the conditions had been complied with. If the conditions had been complied with, the first and fifth respondents would issue all necessary licences for the carrying on of the petitioner's business. *In the circumstances, the Court considered it unnecessary to consider the question of granting leave to proceed at that stage.*

When the matter came up before Court on 17 June, 97, learned counsel for the Pradeshiya Sabha undertook to instruct the Pradeshiya Sabha to send officers to take steps leading to the issue of the Certificate of Conformity. The application of certain persons – the 7th

to 10th respondents – to be added as intervenient-respondents was not considered on that day. On 30th June, 1997 learned counsel appearing for the intervenient-respondents objected to the settlement arrived at on 17.3.97. The application for intervention was allowed on 29 August, 1997. The petitioner moved that contempt proceedings be taken against the Chairman of the fifth respondent. Leave to proceed was granted for the alleged infringement of Article 12 (1) of the Constitution on 11 September, 1997. When the matter came up before Court on 9.12.97, learned counsel for the Central Environmental Authority stated that he had no objection to the issue of the Certificate of Conformity. Learned counsel for the Pradeshiya Sabha stated that the building was in conformity with the approved plan except for an omission which if rectified would bring the building into conformity with the plan. Learned counsel for the intervenient-respondents objected to the issue of the Certificate of Conformity.

The intervenient-respondents object to the establishment of the saw mill on the grounds that (1) noise emitted by the operation of the machinery, unloading of logs, etc., will create a nuisance and will adversely impact on the peace and quiet hitherto enjoyed by them; (2) health hazards would be caused by saw dust; (3) the road would be obstructed by vehicles bringing raw materials to the Saw Mill; (4) the Mill would disturb the calm and peaceful environment of a residential area; and (5) the establishment of the Saw Mill would violate the provisions of the National Environmental Act and other public health and building regulations.

The stage at which the complaint was made to this Court is the site clearance stage. It is the stage at which an industrialist is granted or refused permission to begin preparations for setting up his operations. Obtaining permission at that stage does not constitute the granting of a licence. A petitioner who receives a favourable response to a site clearance application must comply with the terms and conditions upon which such clearance is granted. In the present case, as we have seen, the Central Environmental Authority and the Pradeshiya Sabha have both laid down several conditions, aimed no doubt, at eliminating the hazards and inconveniences that the intervenient-respondents fear. In any event, no operations can commence until the petitioner has obtained a licence issued under Part IV A of the National Environmental Act. One would expect that the Central Environmental Authority and delegate institutions, like the Homagama Pradeshiya Sabha, would hear neighbourhood objections, inform the industrialist of the objections, hear the views of the

industrialist, and after weighing the evidence in the light of the submissions made by both sides, decide for reasons stated in writing and no other, that the licence will be granted or refused. The decision and the reasons should be communicated to the industrialist and the persons who raised objections.

Publicity, transparency and fairness are essential if the goal of sustainable development is to be achieved. In the matter before us, none of these elements were present and in my view the first and fifth respondents acted in an arbitrary manner in suspending the authorization granted earlier. In fact the first and fifth respondents, during the hearing, stated that they were prepared to permit the resumption of work, thereby acknowledging the fact that the suspension was an ill-considered act.

In the circumstances, I hold that the first and fifth respondents violated Article 12 (1) of the Constitution and I make order quashing the suspension of authority to proceed with the setting up of the Saw Mill as set out in the letter of the first respondent dated the 27th of January, 1997.

The fifth respondent is directed to pay the petitioner a sum of Rs. 10,000 as costs.

PERERA, J. – I agree.

GUNAWARDENA, J. – I agree.

Relief granted.
