

**JAYAWARDENA**  
**v.**  
**AKMEEMANA PRADESHIYA SABHA AND OTHERS**

SUPREME COURT  
AMERASINGHE, J.,  
WIJETUNGE J.  
GUNAWARDENA, J.  
S.C. APPLICATION NO. 594/96/FR  
SEPTEMBER 15, 1997.

*Fundamental Rights – Article 14 (1)(g) of the Constitution – National Environmental Act, Nos. 47 of 1980 & 56 of 1988 ss. 23A, 23B, 23D, 23E and 26 – National Environmental (Protection & Quality) Regulations No. 1 of 1990 Reg. 2 & 10 – Right to cancel Environment Protection Licence – Noise pollution and Dust pollution – Right to hearing before cancellation – Infringement only when the occupation, business or trade is lawful and not when it is unlawful – Failure to comply with conditions of licence – Allegation of political motives.*

The son of the petitioner on October 26, 1995, applied for permission to set up a metal crushing operation at Kalaha. This was refused on July 08, 1996, the petitioner sought permission for setting up metal crushing operation on a land, some 25 metres away from the first taken on lease by his son. The Central Environmental Authority (CEA) inspected the land and by letter dated July 08, 1996, addressed to the Chairman (2nd respondent) of the Pradeshiya Sabha granted permission. On July 17, 1996, the petitioner submitted an application to the Pradeshiya Sabha for an Environmental Protection Licence and paid the prescribed inspection fees. After the site was inspected an Environmental Protection Licence was issued on July 24, 1996, to the petitioner. The petitioner commenced operations on July 25, 1996. On July 27, 1996, the Chairman (2nd respondent) informed the petitioner that the 3rd respondent Hon. Richard Pathirana, Minister of Education and Higher Education had objected and found fault with him for permitting the setting-up of the metal crushing operation. Two Police officers also visited the petitioner and directed him to stop work. The 3rd respondent Minister in his affidavit stated he only asked the Chairman 2nd respondent to look into the grievance of the respondents. He did not ask the 2nd respondent to cancel the licence and he was not responsible for what the Police did. The Chairman 2nd respondent in his affidavit stated a public petition had been handed to him and about 100 residents had gathered round the Sabha premises and protested and the Police had to be brought in to maintain law and order. Some of the residents handed over a petition and on this the Environment officers of the Pradeshiya Sabha carried out a site inspection. They found the petitioner had commenced operations without obtaining a Trade Licence which was one of the conditions. The importance of the Trade Licence is that it is issued only if there

is a report from the Public Health office. Further the conditions for minimising noise and dust pollution had not been complied with. On July 27, 1996, the Chairman wrote to the petitioner cancelling the licence. At the Chairman's request, the Commissioner of Local Government had after inspection advised against the issue of an Environmental Protection Licence.

The Akmeemana Pradeshiya Sabha was exercising power, duties and functions of the Central Environmental Authority under delegation, in terms of section 26 of the National Environmental Act.

**Held:**

1. The emission of dust and noise from the metal crushing operation was lawful if only such operation was licenced. A licence was issued to the petitioner but it was subject to specified conditions. A person who does not comply with the conditions of a licence, acts as if he had no licence. Therefore the petitioner's occupation, business or enterprise was unlawful in terms of section 23A read with section 23B of the National Environmental Act.
2. The petitioner acted in violation of the conditions subject to which he was permitted to carry on operations and the Authority was entitled to cancel the licence.
3. The air pollution and noise pollution altered the receiving environment by making it less conducive to public safety and health. The strong protest of the affected community underscored the urgency to take remedial action. In the circumstances the Akmeemana Pradeshiya Sabha and its Chairman were entitled to use the powers given to them by section 23D of the National Environmental Act and the proviso to Regulation 10 of the National Environmental (Protection & Quality) Regulations No. 1 of 1990 to forthwith issue an order cancelling the licence rather than affording the petitioner an opportunity of showing cause why the licence should not be cancelled.
4. The allegation that the Pradeshiya Sabha failed to act in accordance with the law and were acting in arbitrary capricious and mala fide manner at the instigation of the 3rd respondent Minister fails.
5. The allegation that the authority was moved by the political ulterior consideration of ill will to the petitioner and his family to cancel the licence cannot be sustained.

**APPLICATION** for relief for infringement of fundamental rights guaranteed under Article 14 (1) (g) of the Constitution.

*T. Marapana, P.C with Nalin Ladduwahetty, Jayantha Fernando and Dhammika D. Yapa* for petitioner.

*Lalanath de Silva with Mihiri Gunawardene* for the 1st and 2nd respondents.

*E. D. Wickramanayake with A. W. Yoosuf* for the 3rd respondent.

*N. Pulle*, State Counsel for the Attorney-General.

*Cur. adv. vult.*

September 24, 1997.

### **AMERASINGHE, J.**

The petitioner was granted leave to proceed with his application for the alleged infringement of Articles 12 (1) and 14 (1) (g) of the Constitution.

On 26 October, 1995, Ravi Jayewardena, the son of the petitioner applied for permission to set up a metal crushing operation at Kalahe. On 21 November, 1995, the Central Environmental Authority, after investigation, advised the Chairman of the Akmeemana Pradeshiya Sabha that due to noise and dust pollution which was likely to affect the occupants of the several houses situated close to the proposed site of the operation, permission to set up the proposed operation was refused. On 10 April, 1996, Ravi Jayewardena leased a land of 14.9 perches in extent situated some twenty-five metres from the site on which he had earlier intended to set up the metal crushing operation to enable his father, the petitioner, to set up a metal crushing operation on the leased land. The petitioner submitted an application on 25 April, 1996, to the Central Environmental Authority (CEA) and paid the inspection fee. Officers of the CEA inspected the proposed site and by its letter dated 8 July, 1996, addressed to the 2nd respondent – the Chairman of the Akmeemana Pradeshiya Sabha – granted permission for the proposed metal crushing operation. A copy of that letter was sent to the petitioner. On 17 July, 1996, the petitioner submitted an application to the Akmeemana Pradeshiya Sabha – the 1st respondent – for an Environmental Protection Licence and paid the prescribed inspection fees. Thereafter three officials of the Pradeshiya Sabha, including the 2nd respondent and two Environment Officers visited the site and on 24 July, 1996, the Pradeshiya Sabha issued the Environmental Protection Licence. The petitioner commenced operations on 25 July, 1996.

On 27 July, 1996, the 2nd respondent informed the petitioner that he had received a telephone call from the 3rd respondent – The Hon. Richard Pathirana, Minister of Education and Higher Education.

According to the petitioner the Honourable Minister had told the 2nd respondent that he objected to the petitioner being allowed to conduct his business and had found fault with him for permitting the petitioner to set up the metal crushing operation. Two police officers called on the petitioner and requested him to stop his operations. According to the petitioner the Honourable Minister had telephoned the Officer-in-Charge of the Habaraduwa Police Station and instructed him to stop the petitioner's metal crushing operations. The Honourable Minister admits that he did telephone the 2nd respondent and asked him to look into representations made to him that noise and dust pollution resulting from the operation of the metal crusher would adversely affect the lives of the residents in the area, but denies any other involvement. The 2nd respondent in his affidavit states that the 3rd respondent did not ask him to cancel the licence but requested him "to look into the grievances of the residents whom he said he had seen and complained about the metal crusher". I have no hesitation in accepting the evidence of the 3rd respondent. He was the Member of Parliament of the area and had every right and indeed a duty to require the 2nd respondent to look into the complaints made by his constituents. He was not responsible for the action taken by the 2nd respondent or by the police and I therefore declare that the 3rd respondent did not violate any of the petitioner's fundamental rights.

The manner in which the operations were brought to a halt is explained in paragraph 11 of the affidavit of the Chairman of the Pradeshiya Sabha dated 22 November, 1996: ". . . A public petition against the construction of the metal crusher was handed over to me by a large number of residents in the area on 26.07.1996 . . . On 27.07.1996 over 100 residents from around the petitioner's site gathered at the Pradeshiya Sabha premises, surrounded it and protested strongly against the authorization of the metal crusher. In order to maintain law and order. I requested the Officer-in-Charge of the Habaraduwa Police Station – the 4th respondent – to take steps to stop the activities of the said metal crusher temporarily. Some of the residents who handed over the petition have made several complaints to the police on the said metal crusher".

Upon receipt of the petition the Environment Officers of the Pradeshiya Sabha carried out a site inspection on 26 July, 1996. It was found that the petitioner had commenced operations without obtaining a Trade Licence as he was obliged to do by law and the

terms of the letter of approval issued by the Central Environmental Authority on 8 July, 1996 and the terms of the licence issued by the Pradeshiya Sabha on 24 July, 1996. The importance of obtaining a Trade Licence before the commencement of operations is that such a Licence is issued only if there is a report from a Public Health Officer in terms of the form printed behind the application for the Licence with regard to a proposed undertaking. At the time of the commencement of the petitioner's operations, there was no such report yet called for by the Pradeshiya Sabha with regard to the petitioner's application which appears to have been dated the 25th of July, 1996: It seems the date was altered. The receipt for the payment of the Trade Licence Fee is dated 31 July, 1996. Additionally, the conditions stipulated in the letter of recommendation of the Central Environmental Authority and in the Environmental Protection Licence aimed at preventing or minimizing noise and dust pollution had not been complied with prior to the commencement of the operations. On 27 July, 1996, the 2nd respondent wrote to the petitioner cancelling the Environmental Protection Licence issued by him on 24 July, 1996. On 1 August, 1996, the 2nd respondent requested the Commissioner of Local Government to carry out a site inspection. The Commissioner of Local Government in his letter dated 9 September, 1996, advised against the issue of an Environmental Protection Licence stating that the location was unsuitable for a metal crushing operation.

In terms of section 23 A of the National Environmental Act Nos. 47 of 1980 & 56 of 1988 "no person shall discharge, deposit or emit waste into the environment which will cause pollution except (a) under the authority of a licence issued by the Authority; and (b) in accordance with such standards and other criteria as may be prescribed under this Act". Regulation 2 of the National Environmental (Protection & Quality) Regulations No. 1 of 1990 makes it clear that "pollution" includes "noise pollution". Section 23 B (2) states, *inter alia*, that every such licence "shall be subject to such terms, conditions and standards as may be prescribed". Section 23 D states: "Where a licence has been issued to any person . . . and such person acts in violation of any of the terms, standards and conditions of the licence . . . the Authority may by order . . . cancel such licence". Any person who is aggrieved by such an order may appeal against such cancellation to the Secretary to the Ministry. (section 23 E). Regulation 10 states that "The Authority may, before issuing an order . . . cancelling a licence under section 23 D of the Act give the holder of the licence

an opportunity to show cause why such order should not be issued. Provided that, where, since the issue of the licence, the receiving environment has been altered or changed due to natural factors or otherwise or where continued discharge, deposition or emission of waste into the environment under the licence will or could affect any beneficial use adversely, the Authority shall forthwith issue an order suspending the licence for a period to be specified in the order or cancel such licence".

It was not in dispute that the Akmeemana Pradeshiya Sabha was exercising the powers, duties and functions of the Central Environmental Authority under delegation in terms of section 26 of the National Environmental Act.

Article 14 (1) (g) of the Constitution declares and recognizes the right of every citizen to the freedom to engage by himself or in association with others in any *lawful* occupation, profession, trade, business or enterprise. (The emphasis is mine). The emission of dust and noise from the metal crushing operation was lawful only if such operation was licensed. A licence was issued to the petitioner: but it was subject to specified conditions. In my view a person who does not comply with the conditions of a licence, acts as if he had no licence, for the licence would not have been issued except on the basis that the conditions were complied with. In the circumstances, the petitioner's occupation, business or enterprise was unlawful in terms of section 23 A read with section 23 B of the National Environmental Act and he cannot complain that he had any right to carry on such an activity. I therefore declare that Article 14 (1) (g) was not violated.

The petitioner acted in violation of the conditions subject to which he was permitted to commence and carry on operations and the Authority was entitled in law to cancel the licence. The Authority may have given the petitioner an opportunity of showing cause why his licence should not be cancelled; however, in my view, by his failure to comply with the conditions of the licence – the conditions on the basis of which the Central Environmental Authority authorized the Pradeshiya Sabha to issue the licence – the petitioner's metal crushing operation by the noise it created caused at least irritation; by discharging dust it brought about an undesirable change in the characteristics of the air which could adversely affect the inhabitants

of the neighbourhood. The air pollution and noise pollution altered the receiving environment and adversely affected the beneficial use of the environment by making it less conducive to public safety and health. The strong protests of the affected community underscored the urgency to take immediate remedial action. In the circumstances, in my view the Akmeemana Pradeshiya Sabha and its Chairman, the 1st and 2nd respondents, were entitled to use the powers given to them by section 23 D of the National Environmental Act and the proviso to Regulation 10 of the National Environmental (Protection & Quality) Regulations No. 1 of 1990 to forthwith issue an order cancelling the licence rather than first affording the petitioner an opportunity of showing cause why the licence should not be cancelled.

I reject the allegation that the 1st and 2nd respondents had failed to act in accordance with the law and that they were acting in an arbitrary, capricious and *mala fide* manner at the instigation of the 3rd respondent. The petitioner alleged that the 3rd respondent was not favourably disposed to the petitioner and his family because his son had "campaign vigorously" for a Member of Parliament elected from a rival political party – the U.N.P. The 3rd respondent in his affidavit states that he was aware that the petitioner is a supporter of the U.N.P, but adds that "until reading this petition, I believed that the petitioner's son . . . was a staunch supporter of the Sri Lanka Freedom Party as he represented himself to be and acted as though he was such a supporter". The petitioner's son was issued a licence by the same Pradeshiya Sabha to operate a saw mill and this is inconsistent with the petitioner's suggestion that the authority concerned was moved by the alleged ulterior consideration of ill will to the petitioner and his family to cancel the licence issued to the petitioner. I have already explained why the 3rd respondent cannot be said to have been instrumental in having the licence cancelled. I have also explained why it was lawful for the 1st and 2nd respondents to cancel the licence. In the circumstances, it has not been established that the 1st and 2nd respondents either acted in an unlawfully discriminatory manner or that they transgressed the petitioner's right to equality before the law and equal protection of the law declared and recognized by Article 12 of the Constitution.

For the reasons stated in my judgment I declare that Articles 12 and 14 (1) (g) of the Constitution have not been violated by the 1st, 2nd, 3rd and 4th respondents and make order dismissing the application.

Learned counsel for the 1st and 2nd respondents properly conceded that the Central Environmental Authority, who is not a party to these proceedings, but on whose instructions the Pradeshiya Sabha acted, had failed to act in accordance with the prescribed guidelines. In the circumstances the parties shall bear their own costs.

**WIJETUNGA, J.** – I agree.

**GUNAWARDENA, J.** – I agree.

*Application dismissed.*

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