

**NILWALA VIDULIBALA COMPANY (PVT) LTD.  
VS  
KOTAPOLA PRADESHIYA SABHA AND OTHERS**

COURT OF APPEAL  
SRISKANDARAJAH, J  
C. A. 2001/03  
DECEMBER 3, 2004 AND  
JANUARY 10, 2005

*Writ of mandamus on Pradeshiya Sabha - Hydro Electricity Project - Is it a devolved subject? - Jurisdiction of the Court of Appeal - Constitution, Articles 140, 154, and 154 (4) b- 13th Amendment - Concurrent List - Provincial List - Reserved List*

The petitioner sought to challenge the decision and/or the recommendations made by the 1st respondent Pradeshiya Sabha in respect of hydro - electricity projects. Raising a preliminary objection, the respondents contended that, hydro power generation not being a devolved subject, the Pradeshiya Sabha has no powers in relation to approval or granting of permission for power projects.

**HELD**

- (i) In terms of the 13th Amendment, any subject not specified in the Provincial List (List 1) or the Concurrent List (List III) is deemed to be included in the Reserved List. In this instance as there is no reference to hydro power or grid connected power in List 1 or List III, it is clear that these are Reserved Subjects.

- (ii) Writ jurisdiction conferred on the Provincial High Court, is concurrent with the jurisdiction of the Court of Appeal under Article 140, and the latter has not been diminished by the 13th Amendment.

“Relief sought is for the exercise of power in relation to hydro power generation which is not a subject in the Provincial List of the 13th Amendment, therefore the Provincial High Court has no jurisdiction to entertain this application under Article 140, of the constitution the Court of Appeal could hear and determine applications of this nature.”

**PRELIMINARY OBJECTION** in relation to the jurisdiction of the Court of Appeal.

**Case referred to :**

1. *Weragama vs Eksath Lanka Wathu Kamkaru Samitiya and 2 others*  
(1994) 1 Sri LR 293

*S. S. Sahabandu P. C.*, with *Ruana Rajapakse* for petitioner.

*Hugo Anthony* for 1st, 2nd and 3rd respondents.

*N. Idroos*, State Counsel for 4th and 6th respondents.

*Geoffry Alagaratnam* with *Anura Ranawaka* for 7th respondent

*Cur. adv. vult.*

March 10, 2005

**SRISKANDARAJAH, J.**

The 1st, 2nd and the 3rd Respondents raised a preliminary objection that this court has no jurisdiction to entertain this application. In this application the writ of prohibition and mandamus is sought against the 1st Respondent challenging the decision and/or the recommendation made by the 1st Respondent. The first Respondent is a Pradeshiya Sabha and the writ jurisdiction to challenge its decision is specifically covered by Art 154(4) (b) of the Constitution of the Democratic Socialist Republic of Sri Lanka. Accordingly the issuing of writs sought in the petition of the Petitioner is strictly within the purview of the relevant Provincial High Court created by the Constitution. Therefore these Respondents submitted that this Court has no jurisdiction to hear and determine this application.

The 7th Respondent submitted that the hydro power generation not being a devolved subject the Pradeshiya Sabha has no powers in relation

to approval or granting of permission for power projects. The 7th Respondent also associated himself with the 1st to the 3rd Respondent's preliminary objection and submitted that the Petitioners challenge is regarding the powers, procedure and the approvals granted by the Pradeshiya Sabha in relation to power generation. Therefore it could only be challenged in the High Court of the Province.

The Petitioner submitted that the subject matter of the project for which the Petitioner is seeking approval namely hydro - electricity, is not a subject that is devolved to the Provincial Councils or it is not in any type of power project that is connected to the national grid so devolved. The only reference to electricity in the 13th Amendment to the Constitution occurs in the Provincial List, as item 34 and it is in the form of an exemption. Item 34 reads as follows.

“Development, conservation and management of sites and facilities in the Province for the generation and promotion of electrical energy (other than hydro electric power and power generated to feed the national grid)”

In terms of the 13th Amendment to the Constitution, any subject not specified in the Provincial List (List 1) or the Concurrent List (List III) is deemed to be included in the Reserved List. In this instance, as there is no reference to hydro power or grid connected power other than the reference quoted above, it is clear that these are reserved subjects. The Petitioner further submitted that the meaning of Article 154P was extensively considered by the Supreme Court in the case of *Weragama V Eksath Lanka Wathu Kamkaru Samithiya and others*<sup>11</sup> Firstly : the Supreme Court held that the writ jurisdiction conferred on the Provincial High Courts is concurrent with the jurisdiction of the Court of Appeal under Article 140 and that the latter has not been diminished by the 13th Amendment to the Constitution. Secondly, on the question of interpretation of Article 154 (4)(b), which is the Article relied upon by the contesting Respondents, the Supreme Court held that the words “any law” under that section should be read conjunctively with the words “in respect of any matter set out in the Provincial list”. The Petitioner further submitted that since the Respondents, including the Pradeshiya Sabha, cannot be said to be acting under any law in respect of a matter in the Provincial List, the Provincial High Court will not have jurisdiction.

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The Petitioner in this application has sought writs of Prohibition and Mandamus not only against the 1st, 2nd and 3rd Respondent's the Pradeshiya Sabha Chairman and the Secretary but also has sought these writs against the 4th, 5th and 6th Respondents whose functions are regulated by the Statutes enacted by Parliament. The relief is sought for the exercise of power in relation to hydro power generation which is not a subject in the Provincial List of the 13th Amendment to the Constitution; therefore the Provincial High Court has no jurisdiction to entertain this application. Under Article 140 of the Constitution the Court of Appeal could hear and determine applications of this nature. For these reasons the Court dismisses the preliminary objection of the Respondents.

*Preliminary objection overruled;  
matter set down for argument*

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