

**VISHVANATH
vs
DIVISIONAL SECRETARY, MADHURAWALA AND OTHERS**

SUPREME COURT
BANDARANAYAKE, J
WEERASURIYA, J AND
FERNANDO, J

SC (FR) APPLICATION NO. 174/2003
8TH OCTOBER, 28TH JANUARY, 2004,
27TH MAY, 13TH JULY, 22ND AUGUST, 2005 AND 5TH JANUARY
AND 1ST FEBRUARY, 2006

Fundamental Rights — Article 12(1) of the Constitution — Authority to operate a stone quarry in 2002 — Delayed due to protests by neighbours and proceedings in the Provincial Council on a petition — Refusal of renewal of authority after 2002 — Justified by protests of neighbours who were affected — Refusal not arbitrary.

After consideration by different authorities namely 1st to 6th respondents, the petitioner was given authority and a trade permit to operate a stone quarry for 2002. Then the 1st respondent (Divisional Secretary) directed him to

suspend the work on the stone quarry as the matter was being considered by the Western Provincial Council on a petition by 7th to 20th respondents. Thereafter when he applied for a renewal of the authority including a permit under the Explosives Act, the 2nd respondent District Secretary informed him that due to protests by neighbors and the harm to the environment, the petitioner's authority will not be renewed.

HELD :

- (1) The refusal to extend the petitioner's authority was not arbitrary and was justified by the protests of (neighbours) affected parties and environmental considerations.
- (2) There was no infringement of the petitioner's rights under Article 12(1) of the Constitution.

Cases referred to :

1. *E. P. Royappa vs State of Tamil Nadu* – (1974) Air (SC) 555
2. *Jayawardena vs Akmeemana Pradeshiya Sabha and Others* – (1998) 1 Sri LR 316
3. *Gabcikovo vs Nagymaros - Project Environmental Aspects of Sri Lanka's Ancient Irrigation System*, Sarvodaya Vishva Lekha Publishers page 27.

APPLICATION for relief for infringement of fundamental rights

Saliya Pieris with *A. Devendra* for petitioner.

Rajiv Gunatillake, State Counsel for 1st to 4th and 21st respondents.

Upul Jayasuriya with *P. Radhakirishna* for 5th and 6th respondents.

Sunil A de Silva for 7th to 9th and 11th to 20th respondents.

Cur.adv.vult.

February 17, 2006

SHIRANI A. BANDARANAYAKE, J.

The petitioner came before this Court alleging that his fundamental rights guaranteed in terms of Articles 12(1) and 14(1)(g) of the Constitution were infringed as the 2nd and 3rd respondents had refused to renew his permit under the Explosives Act and the 5th and 6th respondents had refused to renew the trade permit in respect of the petitioner's quarry.

According to the petitioner he had made an application to the 1st respondent seeking permission to operate a quarry in his land situated at

Ballapitiya. The 1st respondent had referred this application to the Grama Niladhari of Ballapitiya (West) Division and to the Environmental Officer of the Divisional Secretariat, Madhurawala. Both officers had recommended the said application. Thereafter, the said application was forwarded to the 4th respondent by the 1st respondent for necessary approval. A representative of the 4th respondent had inspected the site and after conducting several tests had granted the petitioner a permit for a term of one year commencing from 21.06.2001 (P4). The petitioner's contention is that according to the aforesaid permit (P4) he was granted permission to operate a quarry in a portion of his land depicted as Lot B of the Plan bearing No. 538B dated 05.05.1962. According to the conditions set out in the said permit (P4) the petitioner was required to obtain an Environmental Protection License (EPL) from the Central Environmental Authority (hereinafter referred to as the CEA) prior to commencing operations in the quarry. The petitioner had therefore made an application to the CEA seeking an Environmental Protection License. The CEA had visited the site, had conducted several tests and had granted an Environmental Protection License in terms of Chapter 23A of the National Environmental Act, No. 47 of 1980 for a period of three years commencing from 31.08.2001 (P5). Thereafter the petitioner had made an application to the 5th respondent for a trade permit. The 5th respondent had referred the said application to a Health Officer for an inspection of the site. A Public Health Inspector had visited the site and had submitted a report and the 5th respondent had issued a trade permit for the year 2002 (P6). Thereafter the petitioner had made an application to the 3rd respondent for a permit under the Explosives Act, which was issued in January 2002 after obtaining reports from the 1st respondent and the Grama Niladhari of the area.

The petitioner averred that thereafter he had commenced developing the necessary infrastructure to quarry the land and for that purpose he had prepared a building plan and obtained permission from the 5th respondent to install a metal crusher at the site. After obtaining the approval for the building plan, the petitioner had made an application for the supply of electricity from the Ceylon Electricity Board for which he had paid Rs. 82,697 (P8, P9, P10 and P11).

According to the petitioner, while he was developing the infrastructure facilities at the site, the 7th to 20th respondents established an organization known as 'Environment Protection Organization' and launched a protest campaign against the petitioner's business, alleging that it would cause environmental pollution. Thereafter this dispute was brought to the notice of the Public Petitions Committee of the Western Provincial Council by a member of the Provincial Council. By letter dated 24.01.2002 the 1st respondent had informed the petitioner to refrain from operating the quarry since the matter was pending before the Public Petitions Committee of the Western Provincial Council (P12).

An inquiry was held and the report of the said inquiry was forwarded to the 1st respondent by the Public Petitions Committee informing that since the petitioner had obtained permits for his business, the Public Petitions Committee had no objection in respect of the petitioner's business (P16). Thereafter by letter dated 28.05.2002 the 1st respondent had informed the decision of the Public Petitions Committee and had revoked P12 (P17).

According to the petitioner, by this time the permit granted under the Explosives Act and the permit granted by the 4th respondent had expired and he had to obtain new permits, which were issued by the 3rd and 4th respondents (P18A and P18B). The permit under the Explosives Act was valid from August 2002 to November 2002, (P18A) while the permit for Industrial Mining was valid for one year with effect from 21.06.2002 (P18B).

The petitioner thereafter had made applications to renew his permits for the year 2003. By his letter dated 13.03.2003, the 2nd respondent had informed the petitioner that he would not be granted the permit under the Explosives Act as the 1st respondent had not recommended the petitioner's application due to the protest by the 7th to 20th respondents and that if the quarry is to be operative, it would interfere with the biological, physical, social, economical and cultural patterns of the area (P31). Further the petitioner averred that although he had made an application to the 5th respondent to renew his trade permit in January 2003, he had not received a reply, but the 5th respondent is declining to issue the trade permit.

The petitioner averred that he had spent around Rs. 450,000 for the purpose of purchasing the land, for infrastructure development, to obtain permits and licenses, to obtain the connection for three-phase electricity and for the purchase of explosives.

The petitioner accordingly averred that the decisions of all the relevant respondents in refusing to issue a permit under the Explosives Act and the refusal and/or suspend the trade permit for the year 2003 are illegal, arbitrary, unlawful and unreasonable.

This Court granted leave to proceed for the alleged infringement of Article 12(1) of the Constitution.

The Petitioner's complaint is mainly against the 2nd and 3rd respondents for not issuing a permit under the Explosives Act and the 5th and 6th respondents for not issuing a trade permit for the year 2003.

The 2nd and the 3rd respondents' contention was that they had faced difficulties in renewing the explosives license as there had been protests

by the people of the area, who were residing in and around the petitioner's quarry. The residents were complaining of the adverse effects the operation of the quarry would have on their environment and the safety of themselves and their children. Referring to the report on their environment, the residents had shown deep concern of the effects of the operation of the quarry on the natural surroundings, peace and tranquility that prevailed in and around their residences as well as the historical value of the area, where the said quarry was to operate. In view of these complaints made by the residents it had become necessary for the 2nd and 3rd respondents to re-evaluate the decision to renew the explosives license.

Learned State Counsel for the 1st to 4th and 21st respondents submitted that for the commencement of a quarry it was necessary for the petitioner to fulfil the following :

- (a) a permit from the Geological Survey and Mines Bureau ;
- (b) an environment protection license issued by the CEA ;
- (c) a trade permit from the Local Authority to carry out the business ;
- (d) an explosives permit to carry out the work in the quarry.

For the purpose of operating a quarry as well as for carrying out the blasting operations it would be necessary to have all the aforementioned permits and licenses issued by different authorities, which had been obtained by the petitioner. Learned State Counsel submitted that the purpose of requiring permits and licenses for various activities revolves around the three concepts of regulation, revenue and renewal. The contention of the petitioner was that since he had fulfilled all the necessary requirements at the time he applied for all the permits and licenses and moreover as all the relevant authorities had granted the required permits and licenses, that he is entitled to get the relevant permits and licence renewed, subject to the payment of relevant renewal fees. His position was that if it is a matter of renewal of a permit or a license, then he would be automatically entitled for such renewal.

Learned State Counsel for the 1st to 4th and 21st respondents categorically stated that renewal of permits and licenses are not done either automatically or as of right. His contention was that the three concepts, viz., regulation, revenue and renewal are inter connected. When an application is made for a specific purpose, the kind of activity is regulated to ensure that it is not harmful. After the issuance of the permit when an application is made for renewal, it would be necessary for the relevant authorities to assess the suitability of granting the requested permits and licenses.

Considering the aforementioned submission, it is evident that since the activity of the petitioner in question was directly linked with the question of environmental pollution that it became necessary for the respondents to re-consider the effects of the blasting operations prior to taking a decision in renewing the necessary licenses and permits to carry out a quarry by the petitioner. Moreover, it is also necessary to take into consideration the 1st respondent's averment that the residents of the area in and around the quarry had held demonstrations and had launched poster campaigns against the petitioner's activities and had forwarded complaints to the 1st respondent and other authorities for permitting the petitioner to operate the quarry (1R1).

It was in the backdrop of the aforementioned circumstances that the authorities involved in issuing the relevant permits had to re-assess and re-evaluate the possibility of renewing the permits and licenses issued to the petitioner.

Thus the question that has to be considered by this Court would be as to whether the allegations made by the petitioner, being the decision of the 1st to 6th respondents not renewing his licenses and deciding to carry out further assessments, would be in violation of his fundamental right guaranteed in terms of Article 12(1) of the Constitution.

Article 12(1) of the Constitution deals with the right to equality and states that,

“All persons are equal before the law and are entitled to the equal protection of the law.”

Article 12(1) thus embodies a guarantee against arbitrariness in the decision making process as in Article 14 of the Indian Constitution. Referring to Article 14 in *E. P. Royappa v State of Tamil Nadu*⁽¹⁾ it was stated that,

“The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be ‘cribbed, cabined and confined’ within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness.”

In such circumstances it would become necessary to consider not only the allegations made by the petitioner, but also the grievances of the 1st to 6th respondents, the 7th to 20th respondents and the villagers of the area, thus making it necessary to consider the effects of the blasting and the operation of the quarry of the petitioner. The grievances of the

residents based on the aforementioned grounds were three fold, which included the destruction to the road, damage to their residences and the damage to the environment.

Access to the quarry was from the only approach way available to the residents of the area. This road is a narrow 8 foot road, which had houses on both sides. The District Land Usage Planning Officer, Kalutara had indicated in his report that, mining or quarrying could cause soil erosion and that the road was not suitable for use by heavy vehicles, which would be used for transport to and from the quarry (1R4). The report of the Geological Survey and Mines Bureau dated 13.03.2004 had observed that the houses in the vicinity of the quarry were those made of mud walls. The residents were concerned that continuous and consistent blasting over a prolonged period of time might cause the walls of the houses, especially made out of mud, to crack and later collapse.

More importantly it is to be borne in mind that several representations were made by the residents to state that there is a natural rock formation in the area and that caves in the area would be destroyed and the underground water table could be affected as a result of the operation of the quarry (1R4). Accordingly the stability of the surroundings would be threatened by way of earth slips. The culmination of all the aforementioned factors, according to the contention of the 7th to 20th respondents, was the damage to their environment in an irreparable manner.

Learned Counsel for the petitioner contended that if the 1st to 6th respondents were to refuse the grant of permits to the petitioner to carry out blasting operations and to operate the quarry, why was he given the permits in the first instance, which decision had caused him financial loss as he now has to abandon his business venture.

As correctly pointed out by the learned State Counsel for the 1st to 4th and 21st respondents, the question at issue is not the cancellation of the permits, but the refusal by the relevant authorities of their renewal. The permit for blasting operations under the Explosives Act and the trade permit, as referred to earlier was issued only for a limited period. At the end of the stipulated duration, if it becomes necessary, the applicant would have to apply for the renewal of the licence and/or the permit. At the stage of renewal the relevant authorities would have to take into account an assessment based on the impact on the environment due to the actions taken on the basis of the permit given to him. As correctly stated by the learned Counsel for the 5th and 6th respondents, the issuance of a trade permit is not for the mere purpose of tax collection, as it entails an immense statutory responsibility on the part of the local authority in protecting and promoting the comfort, convenience and welfare of the people within its area of administration.

It is to be borne in mind that by the time the petitioner had applied for the renewal of his permits, there had been intense protests from the residents of the area in and around the petitioner's quarry on the adverse effect the quarry would have on their environment. In *Jayawardane v Akmeemana Pradeshiya Sabha and others*⁽²⁾ considering a cancellation of an existing quarrying license this Court held that 'the strong protest of the affected, community underscored the urgency to take remedial action' and upheld the cancellation of the said existing quarry licence as it amounted to noise and air pollution. Therefore the relevant authorities had rightfully carried out the necessary assessments in order to consider whether it is appropriate to renew the permits issued to the petitioner.

Continuous assessments and monitoring process cannot be regarded as a practice alien to the issuance and renewal of permits. In a situation where permits have to be issued to operate a quarry, the assessment of the impact on the environment over such an operation will also have to be carried out from time to time and therefore will have to continue until the venture is completed. There would be no possibility for the authorities to be satisfied with the initial assessment as it would not be possible to gauge the impact only on an initial assessment. In fact this position was considered in the well known decision in the case concerning *The Gabcikovo – Nagymaros Project*⁽³⁾ involving a dispute between Hungary and Slovakia on the damming of the river Danube where Justice Weeramantry in his separate opinion had clearly stated that,

“Environmental impact assessment means not merely an assessment prior to the commencement of the project, but a continuing assessment and evaluation as long as the project is in operation. This follows from the fact the EIA is a dynamic principle and is not confined to a pre-project evaluation of possible environmental consequences. As long as a project of some magnitude is in operation, EIA must continue, for every such project can have some unexpected consequences ; and considerations of prudence would point to the need for continuous monitoring.”

In fact Clause 5 of the Environmental Protection licence issued to the petitioner clearly stipulates that there should be no harm to persons or property arising from blasting activity (P5). Accordingly if there are complaints based on such blasting operations then it would certainly be necessary for the relevant authority to assess the impact on the environment. Considering all the surrounding factors regarding the operation of the quarry it is quite obvious that the 1st to 6th respondents had no possibility to renew the licence and the permit granted to the petitioner. Giving due consideration for a suitable environment for adequate living and well-being,

is included in the Universal Declaration of Human Rights, as Article 25, states that 'everyone has the right to a standard of living adequate for the health and well-being of himself and of his family'. Accordingly, considering all the facts and circumstances in this case, it cannot be stated that the 1st to 6th respondents had acted arbitrarily or unreasonably when they refused the petitioner's application to renew the permits and licences issued to him.

With regard to the economical loss the petitioner has complained of, it is to be noted that, the purchase of the land and the electricity connection cannot be considered a loss since the expenditure on purchase of the land could be recovered if necessary by selling the property and the electricity connection would be considered as an improvement to the property, which would have enhanced its value. Moreover, the expenditure on the permits cannot be recovered from the respondents since there has been no cancellation of those permits. The allegation against the respondents was only on the basis of the refusal of the renewal of the permits.

For the reasons aforementioned, I declare that Article 12(1) of the Constitution had not been violated by the 1st to 6th respondents. I accordingly make order dismissing this application, but in all the circumstances of this case without costs.

WEERASURIYA, J. — I agree.

FERNANDO, J. — I agree.

Appeal dismissed.
