

**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 *prohibition* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. Writ Application
No: **833/2010**

Bharti Airtel Lanka (Private) Limited
No.598,
Elwitigala Mawatha,
Colombo 05.

PETITIONER

Vs.

1. Yamith Chandane Hathurusinghe
Chairman,
Horana Pradeshiya Sabha,
Kananvila,
Horana.
2. Horana Pradeshiya Sabha
Kananvila,
Horana.
3. Telecommunication Regulatory
Commission of Sri Lanka
No,276,
Elwitigala Mawatha,
Colombo 08.
4. Hon. Attorney General
The Attorney Generals' Department,
Colombo 12.

RESPONDENTS

C.A. Writ Application No.833/2010

Before : **S.Sriskandarajah, J (P,C/A) & Deepali Wijesundera, J.**

Counsel : Riad Ameen with Ishara Gunawardena instructed by Paul Ratnayake Associates for the Petitioner
Athula Perera for the 1st and 2nd respondents.
Sumathi Dharmawardena SSC for the 3rd and 4th respondents.

Argued & Decided on : 09th July,2012.

S.Sriskandarajah, J. (P,C/A)

The petitioner is a Company incorporated in Sri Lanka and ~~for~~ the business of the said company is to provide communication facility and for that purpose it erected Base Stations throughout Sri Lanka. It has obtained approval from the Civil Aviation Authority, BOI, UDA, Ministry of Defence, Public Security Law and Order, The Telecommunication Regulatory Commission of Sri Lanka and it has also obtained permission from Horana Pradeshiya Sabha. The said Horana Pradeshiya Sabha, the 2nd respondent by document dated 26.03.2010 has given approval for the said constructions under Section 8(j)(1) of the Urban Development Authority Amendment Act No.4 of 1982. Thereafter the said Pradeshiya

Sabha, the 2nd respondent has temporarily suspended the said permission granted to the petitioner by its letter dated 03.05.2010. The reason for the said suspension is on a public protect. When this matter was taken up in this Court, both Counsel for the petitioner and the 1st respondent indicated to Court that the public was of the view that the transmission through this tower might affect the public and that was the reason the public were objecting to the said tower. The Court directed the petitioner and the 1st and 2nd respondents to have a public hearing to educate the public in relation to the effect of the function of the said tower. A public hearing was held and in that public hearing the petitioner and the 3rd respondent, the Telecommunication Regulatory Commission participated and has explained to the public that the said tower is erected with the necessary safe guards and also in compliance with the World Health Organization guide lines on Radio Emitting Apparatus.

As the said tower and the other constructions relating to the tower is in accordance with the building regulations as per the 1st and 2nd respondents and hence they have given the approval for the said tower to be erected in the said Pradeshiya Sabha area. The reasons given by the Pradeshiya Sabha for the temporary suspension in the document marked P5 is not within the prescribed provisions in which that Pradeshiya Sabha can reject granting such an approval and

therefore revocation of the granting of approval by the 1st and 2nd respondents is irrational and has no basis in relation to the provision of the law. As such this Court quashes the said revocation of the permission granted to the 1st respondent and hence this Court issues a writ of certiorari quashing the decision of the 1st and 2nd respondents contained in the letter dated 03.05.2010 marked P5. The application for writ of certiorari is allowed without costs as prayed for in prayer "c" of the petition.

PRESIDENT OF THE COURT OF APPEAL

Deepali Wijesundera, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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