

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
Mandamus under and in terms of Article
140 of the Constitution.

Finlay Cold Storage (Private) Ltd.
309/7, Negombo Road,
Welisara.

PETITIONER

C.A. (Writ) Application No.630/2011

Vs

1. Public Utilities Commission of Sri
Lanka
6th Floor, BOC Merchant Tower
St. Michael's Road,
Colombo 03.
2. Dr. Jayatissa De Costa PC
Chairman
Public Utilities Commission of Sri
Lanka
6th Floor, BOC Merchant Tower
St. Michael's Road, Colombo 03.

3. Mr. Damitha Kumarasinghe
Director General
Public Utilities Commission of Sri Lanka
6th Floor, BOC Merchant Tower
St. Michael's Road,
Colombo 03.
4. Ms. Janaki Vithanagama
Secretary
Public Utilities Commission of Sri Lanka
6th Floor, BOC Merchant Tower
St. Michael's Road,
Colombo 03.
5. Ceylon Electricity Board (CEB)
50, Sir Chittampalam Gardiner
Mw, Colombo 02.
6. Lanka Electricity Company
(Private) Limited (LECO)
411, Galle Road,
Colombo 03.

RESPONDENTS

BEFORE

: Deepali Wijesundera J.

COUNSEL

: Sanjeewa Jayawardhana PC

With Senany Dayarathna for the
Petitioner.

Daya Guruge for the 1st to 4th
Respondents.

Riad Ameen for the 5th
Respondent.

Shantha Jayawardhana with
D.Imbuldeniya for the 6th
Respondent.

ARGUED ON

: 04th August, 2014.

DECIDED ON

: 31st October, 2014.

Deepali Wijesundera J.

The petitioner has filed this application to quash the decision **P12** of the Public Utilities Commission dated 01/03/2011 not recommending the changing of the existing General purpose Tariff Category of the petitioner into Industrial Tariff Category as per Sec. 4 of the Gazette

Notification No. 1572/25 of 24/10/2008. And for a writ of Mandamus to direct the 5th and 6th respondents to clarify the petitioner company's cold chain facility as an 'Industrial Installation' in terms of Industrial Tariff Category for the purpose of computing Tariffs.

The petitioner by the relief prayed for in the petition is seeking to have the refrigerated warehouse classified as an "Industrial Installation", from the 'General purpose category'. The petitioner submitted that the electricity supplied to his business facility is mainly utilized for the generation of motive power and hence his facility falls within the industries mentioned as being eligible to be charged an Industrial Tariff under and in terms of Gazette notification No. 1572/25 dated 24/10/2008 marked as **P2C**.

The petitioner's argument was that on the basis of the respondents report filed as **A5** his facility is primarily dependent on motive power and as such his cold chain facility must be categorized as an 'Industrial Installation' in terms of Industrial Tariff Category 2 (1:2) for the purpose of electricity tariffs. The petitioner also stated that it is unreasonable and unfair for the respondents to refuse to grant the relevant concessions lawfully available to industrial installations.

Producing some pictures of the petitioner's company as X the petitioner stated that his cold chain logistical service is providing an extension to the manufacturing facility and thereby clearly could be classified as an industry under the said gazette P2C.

The petitioner further submitted that the petitioner's company provided cold chain logistical services to all leading dairy and processed meat manufactures thereby provided a temperature control environment. The petitioner stated that the respondents have illogically and with mala fides attempted to disregard the primary objectives of the petitioner's company and have unreasonably focused their reasoning on the term warehouse, merely because goods are stored there.

The learned counsel for the 5th respondent made an application to be discharged from the instant case since the petitioner has not prayed any relief from the 5th respondent.

The other respondents submitted that the petitioner's application is misconceived in law. The respondents submitted that the 1st respondent is empowered under *Sri Lanka Electricity Act No. 20 of 2009* to regulate tariffs and other charges and that one of the ways the 1st

respondent regulates tariffs is by way of the approval granted by it to the cost reflective methodology used to set tariffs and 1st respondent approves the tariffs in accordance with the policy guidelines formulated by the Cabinet of Ministers. He further submitted that the petitioner failed to challenge tariff methodology under which the General Tariff and Industrial Tariff Category is found and that the only instance the petitioner sought the intervention of Public Utilities Commission to resolve the dispute in terms of Sec. 39(1) of the SLEA is shown by P8.

The petitioner submitted that the Public Utilities Commission has merely interpreted its own guidelines which is logically and legally within their purview and has only clarified it and that no act has been done to determine any right of the petitioner other than stating and identifying what the parameters of its own classification, therefore in the absence of a determination by the Public Utilities Commission a writ of certiorari can not be enforced against the 1st respondent and its members.

The respondents stated though the petitioner contends that his business is a "cold chain logistics facility" and is an integral part of certain manufacturing processes and therefore an 'Industrial Installation" the 6th respondent and the 1st to 4th respondents contended that the

petitioner is a 'warehouse' and is not part of any industrial or manufacturing process.

The 6th respondent's preliminary objection to the instant case on the ground that the certificate of incorporation was not annexed can not stand as the petitioner has submitted the same with the counter affidavits.

The main question this court has to decide in this application is whether the petitioner's business falls within the definition provided in Gazettes marked **P2(a)** and **P2(c)** of those activities falling within the "Industrial tariff". This is evident in document **A5** which after considering facts states thus;

"According to the above schedule, the motor driven machinery and the electrical equipment installed in the premises could be categorized into two types (A and B) as shown below.

(A) Motive power used in the warehouse (given in the column A)

– 1308.38 Kw (Percentage of motive power = 90.18%)

(B) Non motive power used in the warehouse (given in the column

B) – 142.44 Kw (Percentage of motive power = 9.82%)

5.0 Executive summary of findings

5.1. Since there is no mechanized manufacturing process in the premises and also, as per the item 3.2 given above the Finlay Cold Storage (Private) Limited'; has to be considered as a **warehouse**.

5.2 According to the Extraordinary Gazette Notification of No. 1572/25 dated October, 24, 2008 on Tariffs and Charges under Section 4 (copy attached), the General Purpose tariff applicable to quote: "the rates GP1, GP2, and GP3 shall be applicable to a supply of electricity to be used in shops, offices, banks, **warehouses**, public buildings, hospitals, educational establishments, places of entertainment and other premises not covered under any other tariffs" unquote. Since, the Finlay Cold Storage (Pvt) Limited is a **warehouse** the General Purpose tariff category is applicable.

6.0 Recommendations:

It is **not recommended** to change the existing General Purpose tariff category obtained under A/C No. 0207151307 of Finlay Cold Storage (Pvt) Limited. 309/7, Negombo Road, Welisara to Industrial purpose tariff category since it is a **warehouse**.

This is a report from two experts on the issue.

**Gazette notification 1572/25 dated 24/10/2008 describes
Industrial tariff as;**

“This rate I.1, I.2 and I.3 set out below shall be applicable to a supply of electricity used wholly or mainly for motive power or for electro-chemical process in factories, workshops, foundries, oil mills, spinning and weaving mills, water supply and irrigation pumping stations, port and dock installations and other similar industrial installation but shall not be applicable to a supply of electricity covered under Section 6 of this Schedule.”

General tariff as;

“The rates G.P.1, G.P.2 and G.P.3 set out below shall be applicable to a supply of electricity to be used in shops, offices, banks, warehouses, public buildings, hospitals, educational establishments, places of entertainment and other premises not covered under any other tariffs in this schedule”.

Therefore it is evident that the petitioner's company is operating as a warehouse and not as a manufacturing industry, the photographs marked as X proves nothing in petitioner's favours. Though the petitioner supplied cold storage to different producers the petitioner

does not produce any goods in the storage facility. Operating a cold storage facility and the mere supply of cold storage to different suppliers in different temperatures does not make the petitioner an Industrialist.

For the afore stated reasons there is no merit in the petitioner's application to issue a writ of certiorari or Mandamus against the respondents. The petitioner's application is dismissed with costs fixed at Rs. 50,000/=.

JUDGE OF THE COURT OF APPEAL.