

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

**Writ Application No. 29/2017**

01. S.A.M. Jayananda, Chairman,  
"Kithulgala Sancharaka Kalapaye  
Parisaraya Surekime Sanvidanaya"  
No.12, Main Road, Kithulgala.

02. Center for Environmental Justice,  
(Guarantee Limited),  
No. 20/A, Kuruppu Road, Colombo 8.

**Petitioners**

**Vs.**

01. Central Environmental Authority,  
No. 104, Parisara Piyasa,  
Robert Gunawardena Mawatha, Battaramulla.

01A. Prof. Lal Dharmasiri, Chairman,  
Central Environmental Authority,  
No 104, Parisara Piyasa,  
Robert Gunawardena Mawatha, Battaramulla.

02. Sustainable Energy Authority,  
Block-5, 1<sup>st</sup> Floor, BMICH, Bauddhaloka Mawatha,  
Colombo 07.

02A. Mr. M.R.Pathmasiri,  
Director General,

03. Mr. Satharasinghe,  
Conservator General of Forest, Department of Forest,  
Rajamalwatte Road, Battaramulla.

04. Director General,  
Department of Wild Life Conservation,  
No 811/A,  
Jayanthipura Road,  
Battaramulla.

05. A.Sarawanabhawan, Secretary,  
Ambagamuwa Pradeshiya Sabhawa,  
Ginigathhena.

06. R.T.P.Sumanasekara, Divisional Secretary,  
Divisional Secretariat, Ginigathhena.

07. Pams Hydro (Pvt) Ltd.  
No. 09, Mahasen Mawatha,  
Colombo 05.

08. Hon. Attorney General,  
Attorney General's Department,  
Hulftsdrop Street,  
Colombo 12.

### **Respondents**

**Court of Appeal case No. CA 29/2017 Writ**

**Before** : L.T.B. Dehideniya J, (P/CA)

&

A.L. Shiran Gooneratne J.

**Counsel** : Ravindranath Dabare instructed by Sugath Athapattu for the  
Petitioner.

P. Ekanayake for the 5<sup>th</sup> Respondent.

Ranil Samarasooriya with Wijesiriwardane for the 7<sup>th</sup> Respondent.

**Decided on** : 09/10/2017

**Order**

**A.L. Shiran Gooneratne J.**

Heard Counsel for the Petitioner and Counsels for the Respondents appearing on notice.

The Learned Counsel for the Petitioner is challenging the construction of the Kehelgamu Oya Mini Hydro Power Project stage-II (the project) from its inception and is seeking an interim relief as prayed for in prayer (k) to the Petition.

The Counsel for the Petitioner inter alia draws attention of Court to paragraph 09 of the petition and submits that the 1<sup>st</sup> to 7<sup>th</sup> Respondents are acting in violation of the provisions under and in terms of the National Environment Act

(NEA) and also acting in violation of Regulations and the Gazette notification made under the said Act and the several other statutes, as set out in the said paragraph.

The crux of the argument advanced by the Counsel for the Petitioner is that the 7<sup>th</sup> Respondent, the project proponent, has failed to answer material questions as set out in A8 and A9 of the Environmental Questionnaire for the Mini Hydro Power Project, marked P3.

The Counsel for the Petitioner has also drawn attention of Court to documents marked P9 and P10 and submits that the Petitioner is in violation of the specific and general conditions of approval of the project and does not have the required Environmental Impact Assessment Report.

The project is classified as a Mini Hydro Power Electric Plant for the generation of 2.0 megawatts. The Environmental Questionnaire in respect of the said power project marked P3 has being submitted for consideration in March 2003. The questions marked A8 and A9 to the said Questionnaire relates to inter alia, the functions and duties stipulated by the various Status, and Ordinances described therein.

The Counsel for the 7<sup>th</sup> Respondent contends that the answers given to questions marked A8 and A9 are found at page 7 onwards in the said Questionnaire in the form of observations and annexures attached to it, and further

contends that in any event the 7<sup>th</sup> Respondent cannot answer any of the said questions directly as formulated, but to depend on the findings submitted by the relevant Authorities establish under the said statutes.

We note the several observations, schedules and annexures attached to the said Questionnaire and the monitoring requirements placed in documents marked P8 and P9. We also note that due to the passage of time from the submission of P3 to date, a monitoring process is in place to arrest violations if any, taking into consideration the present environment conditions and the relevant statutory requirements.

In the circumstances we do not see reason to grant an interim relief as prayed for.

Accordingly the interim relief sought is refused.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya J, (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL