

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

1. A.W. Warnakula,
No.359, Peradeniya Road,
Kandy.
2. Ecotech Lanka (private) Limited,
No.37/A, Thekkawatta,
Gohagoda Road,
Katugastota.
Petitioners

CASE NO: CA/WRIT/399/2016

Vs.

1. Central Environmental Authority,
“Parisarapiyasa”,
No.104,
Densil Kobbekaduwa Mawatha,
Battaramulla.
2. Lal Mervin Dharmasiri,
“Parisarapiyasa”,
No.104,
Densil Kobbekaduwa Mawatha,
Battaramulla.
3. Udaya R. Seneviratne,
Secretary,
Ministry of Mahaweli
Development and Environment,

No.82, Sampathpaya,
Rajamalwatta Road,
Battaramulla.

4. Commissioner,
Municipal Council,
Hill Street, Kandy.
 5. Kandy Municipal Council,
Hill Street, Kandy.
- And 9 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Roshan De Rafayal for the Petitioner.
Vikum De Abrew, Senior D.S.G., for the 1st and
2nd Respondents.
Bharatha Abeynayake for the 4th and 5th
Respondents.

Decided on: 23.05.2019

Samayawardhena, J.

The petitioner company filed this application seeking: to quash by writ of certiorari the decision of the 1st respondent Central Environmental Authority marked P10 not to extend the Environmental Approval, and the rejection of the appeal made against this decision by the 3rd respondent by P17; to compel the 1st respondent Authority to extend the said Approval by writ of mandamus; and to prohibit the 1st and the 3rd respondents from acting upon P10 and P17 by writ of prohibition.

The petitioner has entered into an Agreement with the 5th respondent Kandy Municipal Council marked P2 to implement a project of generating bio gas, electricity and manufacturing organic fertilizer at the garbage dump yard in Gohagoda, Kandy subject to the conditions stated in the Agreement.

It is common ground that obtaining Environmental Impact Assessment Certificate or as the petitioner has loosely called “the Environmental Approval” from the 1st respondent is mandatory to carry out this project. This has been granted from 14.11.2011 for the first three years, and thereafter the 1st respondent has allowed another one year to fulfil the conditions to grant another extension. Admittedly, the required conditions have not been fulfilled by the petitioner during the aforesaid four-year period. The site inspections carried out by the 1st respondent periodically, as seen from 1R1-1R4, clearly explain this fact.

It is clear that although the petitioner entered into the Agreement, it did not have an investor to carry out this massive project during the four-year period. This is manifest *inter alia* by the letter marked P6 sent by the petitioner to the 1st respondent dated 29.06.2015 whereby the petitioner has informed the 1st respondent that the petitioner has decided to sell the petitioner company to another company known as Star Group Lanka Ltd, and in the interim, the latter company would fund the former to carry out immediate work in terms of the Agreement, and on that basis, has sought Environmental Approval.

This is extremely unsatisfactory situation. The garbage disposal problem in the Kandy cannot be solved in this manner.

Before P10 letter (which is sought to be quashed by certiorari) was issued, the 1st respondent granted the petitioner more than four years to fulfil the conditions, and sent several letters (advising, warning and reminding) the dire need to comply with them. P10 letter was not issued unexpectedly or arbitrarily.

The contention of the petitioner seems to be that after P10 letter was issued and before Appeal Inquiry against that decision was held, the petitioner found an investor and fulfilled the necessary conditions. Assuming that is correct, that itself goes to show that P10 decision is not illegal. Finding an investor does not solve the issue. If P10 decision is not illegal, the Appeal decision confirming P10, cannot also be illegal.

Garbage disposal is a national issue and an essential public duty carried out by local bodies such as the 5th respondent. There is no space or time to mollycoddle the petitioner.

Hence, as seen from 5R3 and 5R4, some cabinet decisions have been taken pending the case, to assign this project to be carried out by some other parties. Thereafter the 5th respondent has terminated the Agreement P2 by 5R6 on violation of the terms of the Agreement. Hence this application in any event has now become futile and academic.

There is no way that the Court could grant the reliefs sought for by the petitioner.

Application is dismissed without costs.

Judge of the Court of Appeal