

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

In the matter of an application under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for mandates in the nature of Writs of Mandamus.

Environmental Foundation (Guarantee)
Limited
3A, 1st Lane,
Kirulapona,
Colombo 05.

PETITIONER

CA WRIT No: 463/20

Vs.

1. Hon. Douglas Devananda,
Minister of Fisheries,
Ministry of Fisheries,
Maligawatte Road,
Colombo 10.

2. Hon. Kanchana Wijesekara,
State Minister of Ornamental Fish, Inland
Fish and Prawn Farming,
Fishery Harbour Development,
Multiday Fishing Activities and Fish
Exports,
New Secretariat,
Maligawatte, Colombo 10.,

2.(a) Hon. Deenagama Vitharanage
Chanaka Dinushan,
State Minister of Fisheries,
New Secretariat,
Maligawatte,
Colombo 10.

2.(b) Hon Piyal Nishantha De Silva,
State Minister of Fisheries, New
Secretariat,
Maligawatte, Colombo 10.

3. Mr. S.J. Kahawatta,
Director General,
Department of Fisheries and Aquatic
Resources,
New Secretariat,
Maligawatte, Colombo 10.

4. Mrs. R.M.I. Rathnayake,
Secretary to the Ministry of Fisheries,
Ministry of Fisheries,
Maligawatte Road, Colombo 10.

5. Professor A. Navaratnerajah,
Chairman,
National Aquatic Resources Research and
Development Agency,
Crow Island,
Colombo 15.

5.(a). Professor M.J.S. Wijeyaratne,
Chairman,
National Aquatic Resource Research and
Development Agency,

Crow Island,
Colombo 15.

6. Maj. Gen. S.W.L. Daulagala (Rtd) RSP
VSV USP,
Chairman,
Ceylon Fisheries Corporation,
P.O. Box.1384, Rock House Lane,
Mutwal, Colombo 15.

6.(a). Mr. Chathuranga Udawatte,
Chairman,
Ceylon Fisheries Corporation,
P.O. Box. 1384, Rock House Lane,
Mutwal,
Colombo 15.

7. Capt. Nihal Kappetipola,
Chairman,
Ceylon Fishery Harbours Corporation,
No 15, Rock House Lane,
Colombo 15.

8. Dr. Anil Jasingha,
Secretary,
Ministry of Environment and Wildlife
Resources,
“Sobadam Piyasa”, 416/C/1,
Robert Gunawardana Mawatha,
Battaramulla,

9. Mr. B.K. Prabhath Chandrakeerthi,
Director General,
Coast Conservation and Coastal Resource
Management Department,

4th Floor, Ministry of Fisheries Building,
New Secretariat,
Maligawatta,
Maradana, Colombo 10.

9.(a) Dr. M.M.S.S.B.Yalegama,
Director General,
Coast Conservation and Coastal Resource
Management Department,
4th Floor, Ministry of Fisheries Building,
New Secretariat,
Maligawatta, Maradana, Colombo 10.

9.(b). Mr. R.A.S.Ranawaka,
Director General,
Coast Conservation and Coastal Resource
Management Department,
4th Floor, Ministry of Fisheries Building,
New Secretariat,
Maligawatta, Maradana, Colombo 10.

10. Mr. Jayantha Wijeratne,
Chairman,
National Aquaculture Development
Authority of Sri Lanka, No. 41/1. New
Parliament Rd,
Pelawatte, Battaramulla.

11. Rear Admiral Samantha Wimalatunga,
Director General,
Department of Coast Guard,
Sri Lanka Coast Guard Headquarters,
SLCG 'Rohana', Udupila, Mirissa, Matara.

11.(a)Rear Admiral G. E. W. M. A. N.
Ekanayake,
Director General,
Department of Coast Guard,
Sri Lanka Coast Guard Headquarters,
SLCG 'Rohana' , Udupila, Mirissa, Matara.

12. Mr, Siripala Amarasinghe,
Chairman,
Central Environmental Authority, 104,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

13. Mrs. H.M.S. Herath,
Divisional Secretary,
Divisional Secretariat,
Puttalam.

13.(a). Mr. S.A.Y.R. Jayathilake,
Divisional Secretary,
Divisional Secretariat, Puttalam.

RESPONDENTS

Before: D.N. Samarakoon, J.
B. Sasi Mahendran, J.

Counsel: Geoffrey Alagaratnam PC, with Dhanushan Kaneshayogan, Andrew Keshav
and Supuni Gunasekera instructed by Lakni Silva for the Petitioner
Vikum de Abrew PC, ASG with Rajitha Aluwihare SC for the Respondents

Written 15.11.2022(by the Petitioner)

Submissions: 15.11.2022(by the Respondents)

On

Argued On : 28.09.2022

Decided On : 13.12.2022

B. Sasi Mahendran, J.

The instant application is filed in the public interest by the Petitioner Organisation, Environmental Foundation (Guarantee) Limited, to invoke this Court's Writ jurisdiction to compel the 2nd Respondent and/or any one or more of the Respondents, by way of a Writ of Mandamus, to fully implement the provisions of the Fisheries and Aquatic Resources Act No. 2 of 1996, as amended, which prohibits the practice of bottom trawling, and to prosecute those engaging in such unlawful practice. The application is filed particularly concerning the damage and destruction this practice is causing in the Puttalam Estuary.

The practice of bottom trawling is a method of fishing that involves using a large net with heavy weights, dragged across the bed of the water body. This practice was outlawed by the Fisheries and Aquatic Resources (Amendment) Act No. 11 of 2017, an amendment to the aforesaid principal Fisheries and Aquatic Resources Act, because of the harmful impact of this destructive practice. The destruction that is caused by this unsustainable method of fishing to the environment and the livelihoods of small-scale fishermen is well documented both locally and internationally. Section 28A, which was inserted in the principal enactment by the Amendment Act of 2017, reads:

- (1) (a) **No person shall engage in or cause any other person to be engaged in fishing operations utilizing bottom trawl nets**, including nets with or without two wings or using vertical poles at the two free ends of the net, **to be towed by motorized or mechanized fishing boats**.
- (b) **No person shall use, possess, import, transport, purchase or sell any bottom trawl net**, to be towed by a motorized or mechanized fishing boat for the purpose of carrying out fishing operations in Sri Lanka Waters. [emphasis added]

The Amendment Act creates a new offence by the insertion of subsection (2AA) to Section 49 of the principal enactment. This Section provides that, any person who contravenes or fails to comply with the provisions of Section 28A of this Act shall be guilty of an offence and shall on conviction after summary trial before a Magistrate, be liable to imprisonment for a term not exceeding two years or to a fine, not less than fifty thousand

rupees. Both parties, in their respective submissions, are in complete agreement that this method of fishing is destructive.

The Petitioner Organisation's contention is that, from the data available to them and enumerated in the Petition, there are twenty-three boats that are engaged in this illegal practice in the Puttalam Estuary, despite the ban. This is confirmed by the response to the Petitioner Organisation's right-to-information request. The response letter ("X26") issued under the hand of one Assistant Director, Puttalam of the Department of Fisheries and Aquatic Resources states that at the time the right to information request was made in 2018, there were twenty-three trawling boats operating in the Puttalam District. The Petitioner Organisation alleges that this practice is continuing unabated, with no discernible action taken by the Respondents to eradicate it and penalise those engaging in it. This alleged inaction is notwithstanding numerous letters that have been written to the Respondents by local fishermen, and continuous requests made by the Petitioner Organisation itself calling the attention of the relevant authorities to this illegal practice, all of which are attached to the Petition.

On the other hand, the Respondents contend that no licences to engage in bottom trawling have been issued since the proscription of the practice and that licences have only been issued for trawling nets used for mid-water prawn fishing operations carried out by non-motorized or non-mechanized boats. Therefore, it is contended that the relief prayed for has been implemented. The Respondents have annexed an affidavit ("R5") of the Secretary of the One-Day, Multi-Day Trawling Operators Fisheries Cooperative Society Ltd, Kalpitiya. The Secretary affirms that there are twenty-three boats that engaged in bottom trawling (listed in "R5a"), and consequent to the ban of this practice in 2017, this practice no longer takes place. Further, it is affirmed that licences to engage in bottom trawling had not been issued in respect of those twenty-three boats since 2011. (This, as explained in the Statement of Objections of the Respondents, is a result of a policy decision of the Department of Fisheries and Aquatic Resources ("R3") taken in 2011, based on the recommendations of the National Aquatic Resources and Development Agency ("R2")). The relevant portion of the affidavit ("R5") reads:

“ඉහත සඳහන් ධීවර සමුපකාර සමිතියට ධීවර හා ජලජ සම්පත් දෙපාර්තමේන්තුවේ ලියාපදිංචි වී ඇති බහු දින ධීවර යාත්‍රා විසි තුන (23) ක් පුනරුත්ථාපනය කිරීමේදී කල්පිටිය මුහුදු ප්‍රදේශය තුළ පතුලේ ඇද ගෙන යනු ලබන මොලො දැල්

මෙහෙයුම සඳහා භාවිතා කරන බව ප්‍රකාශ කරමි. එකී යාත්‍රා හිමියන්ට අයත් ධීවර බෝට්ටු නාමලේඛනය ඇමුණුම 01 ලෙස මේ සමඟ ඉදිරිපත් කර ඇති බව වැඩිදුරටත් ප්‍රකාශ කරමි.

2017 අංක 11 දරන ධීවර හා ජලජ සම්පත් පනත සංශෝධන පනත යටතේ එන්ජින් සහිත ධීවර යාත්‍රා මගින් පතුලේ ඇදගෙන යනු ලබන ට්‍රොලි දැල් මෙහෙයුම ක්‍රියාත්මක කිරීම තහනම් කර ඇති බව ප්‍රකාශ කරමි.

2011 වර්ෂයේ සිටම ඇමුණුම 01 හා දැක්වෙන ධීවර යාත්‍රා පතුලේ ඇද ගෙන යනු ලබන ට්‍රොලි දැල් මෙහෙයුම සිදු කිරීම සඳහා ධීවර දෙපාර්තමේන්තුවෙන් බලපත්‍ර ලබා නොදුන් බව ප්‍රකාශ කරමි.

වතර්මානයේ අපගේ සමිතියට අයත් ඇමුණුම 01 හි දැක්වෙන බහු දින යාත්‍රා මගින් පතුලේ ඇද ගෙන යනු ලබන ට්‍රොලි දැල් මෙහෙයුම ශ්‍රී ලංකා ජල තීරය තුළ ක්‍රියාත්මක නොකරන බව ප්‍රකාශ කරමි.”

Nonetheless, the Petitioner Organisation submits that the Respondents have not submitted any documents or other material to substantiate their claim that this practice no longer takes place. No steps have been taken in the least to remove, seize or confiscate the bottom trawl nets installed on those boats, or to prosecute those engaging in it after its proscription, and instead, the Respondents have annexed an affidavit of the Secretary of the One-Day, Multi-Day Trawling Operators Fisheries Cooperative Society Ltd, Kalpitiya, whom himself owns and operates two of the twenty-three boats. It is alleged that this practice continues. To substantiate this the Petitioner Organisation’s counter objections annexes affidavits of two individuals associated with Fishermen’s Cooperative Societies (“H1” and “H2”), with photographs of the vessels.

The role of a Writ of Mandamus, as explained in De Smith’s, ‘Judicial Review’ (Eighth edition) on page 890, “is to enforce the exercise of statutory duties and discretion in accordance with the law”. The conditions that must be satisfied for a Writ of Mandamus to issue were set out in the case of Credit Information Bureau of Sri Lanka v. Messrs Jafferjee & Jafferjee [2005] 1 SLR 89.

In the instant application, we are unable to issue a Writ of Mandamus. This is because a Writ of Mandamus does not lie when there are facts in dispute (Vide Thajudeen v. Sri Lanka Tea Board [1981] 2 SLR 471, approved in Dr. Puvanendran v. Premasiri [2009] 2 SLR 107). Whilst the Respondents contend that they have complied with the law and not issued or renewed licences since the prohibition of bottom trawling for mechanized or motorized boats, the Petitioner Organisation contends that this practice continues. There is contradictory material that is before us, which does not help us

conclude whether the practice is still undertaken. Therefore, we are not able to judge which version is correct.

Having said that, given the important environmental interests at stake, especially the adverse effects caused by the practice of bottom trawling if the practice is continuing, we direct the Department of Fisheries and Aquatic Resources, along with the other relevant authorities to inquire into and identify whether the motorized or mechanized fishing boats, not limited to the twenty-three boats listed in the Petition, in the Puttalam Estuary are engaging in the practice of bottom trawling; to inquire into and identify whether the motorized and mechanized fishing boats continue to use or possess bottom trawl nets; if it is found that such boats are engaging in bottom trawling or continue to use or possess bottom trawl nets, then take steps in terms of Section 49 (2AA) of the Act against those refusing to comply with the law.

Before we conclude, we must note that the Respondent has objected to this application on the ground that the owners of the twenty-three boats are not before this Court, and that any order made adverse to their interests will cause an injustice to them. However, since we are not issuing a Writ of Mandamus, but merely instructing the relevant officials to conduct an inquiry and determine whether in fact this illegal practice of bottom trawling is carried out it cannot be said that an injustice would occasion. This is because if they are not engaging in the practice of bottom trawling they can defend themselves at such inquiry.

This application is dismissed, subject to the aforesaid direction of this Court. We make no order for costs.

JUDGE OF THE COURT OF APPEAL

D. N. SAMARAKOON, J.

I AGREE

JUDGE OF THE COURT OF APPEAL