

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

*In the matter of an Application for Orders in  
the nature of Writ of Mandamus under and in  
terms of Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka..*

**Court of Appeal Case No.  
CA/WRT/128/20**

1. Center for Environmental Justice  
(Guarantee Limited)  
No. 20/A, Kuruppu Road, Colombo 08.
  
2. Withanage Don Hemantha Ranjith  
Sisira Kumara  
Executive Director,  
Center for Environmental Justice,  
20 A, Kuruppu Road, Colombo 08.

**PETITIONERS**

1. Director General,  
Coastal Conservation and Coastal  
Resource Management Department 4th  
Floor, Ministry of Fisheries Building,  
New Secretariat, Maligawatta,  
Maradana, Colombo 10.
  
2. Central Environmental Authority,  
No.104, Denzil Kobbekaduwa  
Mawatha,  
Battaramulla.

3. Minister of Environment, Ministry of Environment,  
"Sobadam Piyasa", 416/C/1, Robert Gunawardana Mawatha,  
Battaramulla

4. Marine Environment Protection Authority 177 Nawala Road,  
Colombo 05.

5. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12

**RESPONDENTS**

Before: M. T. MOHAMMED LAFFAR, J.

Counsel: Dr. Ravindranath Dabare with Savanthi Ponnampereuma,  
instructed by Thushani Jayasekera for the Petitioners

Vikum de Abrew, ASG with N. de Zoysa State Counsel for the Respondents

Argued on: 30.11.2023

Decided on: 27.09.2023

**MOHAMMED LAFFAR, J.**

The Petitioners in this Application in the form of 'Public Interest Litigation', are seeking, orders in the nature of Writs of *Mandamus* seeking several directions;

- 1) To the 3<sup>rd</sup> Respondents to make regulations against single-use plastic and coastal pollution prevention,
- 2) To the 1<sup>st</sup> Respondent to implement the Sri Lanka Coastal Zone and Resource Management Plan – 2018 (marked 'P13'),
- 3) To the 1<sup>st</sup> Respondent to enforce the Coast Conservation and Coastal Resource Management Act No. 57 of 1981 as amended, especially specified sections thereto,
- 4) To the 3<sup>rd</sup> Respondent to enforce Coast Conservation and Coastal Act as amended and National Environmental Act as amended,
- 5) To the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to enforce the National Environmental Act, including coastal zone protection,
- 6) To the 4<sup>th</sup> Respondent to give effect to Marine Pollution Prevention Act No. 35 of 2008,
- 7) To the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to Investigate the 'Mt. Lavinia Beach nourishment project' for compliance with environmental laws,
- 8) To the Respondents investigate and punish those responsible for ocean waste discharge and to the 3<sup>rd</sup> Respondent to amend regulations to include coastal zones in mandatory environmental assessments.

The primary issue in this application revolves around waste materials being washed up onto beaches and the coastal & marine pollution caused thereto in connection with a 'Beach Nourishment Project'. It is submitted that the said project is mainly implemented for the purpose of enhancing coastal stabilization through the concept of beach nourishment which provides a buffer against coastal erosion and to supply the required quantity of sediment to littoral drift. For this purpose, a material quantity of sand had been dredged from off-shore designated areas and the dredged sand is to be directly pumped

to the required locations of the beach. Locations to be nourished have been identified as Mount Lavinia to Angulana and Kalutara. The Petitioners allege that the sand nourishment project had caused adverse environmental impacts, that the said project had not followed the mandatory provisions related to environmental laws.

The Petitioners contend that the Respondents' inaction, omission, or failure to perform their duties is illegal, actions are against the objectives of relevant laws and international conventions and are inconsistent with the Constitution's Directive Principles, Fundamental Duties, and citizens' fundamental rights. The Petitioners also assert that the government, through the Respondents, has neglected its duty as the guardian of natural resources and biodiversity. It is also submitted by the Petitioners' that the Respondents' actions violate international principles of environmental law, including sustainable development, inter-generational equity, the precautionary principle, and the public trust doctrine.

The Respondents' position is that all necessary requirements imposed by the regulatory authorities and the requirements under the law have been complied with and the due process in procurement has been followed. Further they submit that the said project, which has not been identified as a prescribed project, does not require an IEE or an EIA to be conducted in terms of the law.

In the said context, it is for this Court to specifically analyze the conduct of the Respondents in carrying out the said project to determine whether they were in compliance with established laws.

The Beach Nourishment Project began with a Cabinet Memorandum dated 02.02.2018 submitted by the former Minister of Mahaweli Development and Environment. The memorandum sought approval for implementing the Colombo South Sand Nourishment Project using the Sand Engine Methodology, covering the coastline from Colpetty to Mount Lavinia (marked as '1R2'). It highlighted that coastal erosion had been identified in areas

including Mount Lavinia, Dehiwala, Ratmalana, Wedikanda, and Moratuwa, emphasizing the need to nourish the coastline from Mount Lavinia to Ahangama.

By the said Cabinet Memorandum, the following recommendations have been submitted for approval of the Cabinet Ministers:

*“a. To stabilize the coastline from Mount Lavinia to Ahungalla by feeding sand through the Sand Engine Mechanism.*

*b. To start procurement process through the International Competitive Bidding System for the selection of a suitable Sand Mining Contractor to implement the project.*

*c. To exempt the Department of Coast Conservation and Coastal Resources Management from the royalty to be paid to the GSMB for the Sand Mining Project implemented in the off-shore and Sand Catchment Project executed from Mount Lavinia to Angulana.”*

By Cabinet Decision dated 28.02.2018, the approval of the Cabinet of Ministers had been granted for the said project. A Cabinet Memorandum from the Minister of Mahaweli Development and Environment on 30.05.2018 sought approval for extending the Colombo South Sand Nourishment Project from Mount Lavinia to Angulana using the Sand Engine Methodology due to changes in the project scope. Cabinet Approvals and Notes to the Cabinet demonstrate that the project was not conducted arbitrarily, with Cabinet approvals obtained at each step, including the extension from Mount Lavinia to Angulana. On 04.07.2018, the Cabinet approved the extension of the project to the Angulana coastline (marked '1R8'). On 16.08.2018, a Note had been submitted to the Cabinet for approval to implement the project along with a Comprehensive Feasibility Study, which had thereafter been granted on 28.08.2018 (marked '1R9', '1R10'). On 21.09.2018, another Cabinet Memorandum requested approval for calling tenders through LICB (Limited International Competitive Bidding) from contractors already mobilized in Sri

Lanka for the Sand Nourishment Project (marked '1R11'). The Cabinet had approved this request on 18.10.2018 (marked '1R12').

In determining whether necessary requirements imposed by the regulatory authorities and the requirements under the law have been complied with, this Court observes as follows.

The 1st Respondent had requested the renewal of Environmental Approval for offshore sand mining and the Beach Nourishment Project from the CEA (2nd Respondent) after Cabinet approval (marked '1R4'). The CEA had responded on 06.06.2018 (marked '1R5'), indicating that a similar project occurred in 2014 to nourish Unawatuna Bay with 200,000m<sup>3</sup> of sand mined from the same location, 5-10 km away from Ratmalana – Moratuwa DS Administration boundary. The CEA observed that the present project is an alteration to the original proposal due to differences in the transfer route and the quantity of sand to be dredged. The 1st Respondent replied on 07.06.2018 (marked '1R6'), providing clarifications for queries raised by the 2nd Respondent. This response addresses issues such as environmentally protected/sensitive habitats, precautionary measures, and impacts on fisheries. After obtaining Cabinet Approvals, it is submitted that the 1st Respondent had conducted a comprehensive Feasibility Study for the extraction of 800,000 m<sup>3</sup> of sand and the beach nourishment project. A Feasibility Study Report (1R13) has been prepared, covering project details, environmental impacts, mitigation measures, and legal requirements. It concludes that the proposed beach nourishment project has the least impact compared to other coastal stabilization measures and is considered the most environmentally friendly solution in coastal engineering.

Accordingly, the environmental approval which was requested by letter dated 28.05.2018 has been granted by the CEA on 20.06.2018 (marked '1R20'). It is also noted that the Industrial Mining License has been issued by the GSMB for the period of 26.03.2019 to 25/3/2020 (marked 'R21').

With regard to the Environment Impact Assessment, Part IVC of the National Environment Act, No. 47 of 1980 (as amended) outlines the approval process for certain projects. Section 23Z empowers the Minister to designate "Prescribed Projects" through an Order published in the Gazette. Only these "Prescribed Projects" mandatorily require an Environmental Impact Assessment (EIA) or an Initial Environmental Examination (IEE).

Section 23BB(1) mandates that the project approving agencies must request government departments to submit an IEE or EIA within a specified timeframe for projects seeking approval. The Gazette Notification No. 772/22, dated 24.06.1993, published under Section 23Y of the National Environment Act, lists projects considered as "Prescribed Projects". It is observed that Beach Nourishment Projects are not included in this list, meaning they are not required to undergo an IEE or EIA if not identified as "Prescribed Projects".

His Lordship Malalgoda J. in SC Appeal 26/2012 SC Minuted 29.10.2021 quoting ***Thajudeen Vs. Sri Lanka Tea Board and Another (1981)2 Sri LR 471*** held as follows:

*"In Thajudeen, the Honourable Justice Ranasinghe, quoting de. Smith's Judicial Review of Administrative Action (4th ed) 540, 561 stated that, 'Mandamus has always been awarded as an extraordinary, residuary and supplementary remedy to be granted only when there is no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy equally convenient beneficial and effectual is available. Thus, the Writ of Mandamus is principally a discretionary remedy a legal tool for the dispensation of justice, when no other remedy is available.'"*

This Court also observes that in **Public Interest Law Foundation vs. Central Environmental Authority & Another (2001 (3) Sri LR 330)**:

*"The Court is ill equipped to form an opinion on environmental matters - being best left to people who have specialised knowledge and skills in such spheres. Even if a matter may seem to be pre-eminently one of public law, the Courts may decline to exercise review because it is felt that the matter is not justiciable, i.e. not suitable to judicial determination."*

In view of the above, this Court observes that while the administrative acts have been carried out in terms of the law, at this juncture; necessity does not arise for this Court to inquire and analyze the technical intricacies of the matter. Further, at the outset, the reliefs sought by the Petitioners are too broad, not specific and do not encompass or sufficiently justify a fit and proper reason for issue of a Writ of *Mandamus*.

As such, I hold that the decisions challenged by the Petitioners are in line with established principles of law. The Respondents have not acted *ultra vires* or in an arbitrary, capricious, or illegal manner. In this respect, I hold that the Petitioners are not entitled for the reliefs as prayed for.

For the above reasons, I dismiss the Application of the Petitioners and make no Order as to the costs of this Application .

*Application dismissed.*

JUDGE OF THE COURT OF APPEAL