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

C.A Writ No: 433/13

L.A.D.A. Dissanayake
Bandarawatta Galmola,
No.l/l C Seedevi Mawatha,
Yakkala

PETITIONER

Vs.

01. Central Environmental Authority
104, Denzil Kobbekaduwa Mawatha,
Battaramulla.

RESPONDENT

CA 433/2013 WRIT

BEFORE : A.H.M.D. Nawaz, J. &
P. Padman Surasena, J.

COUNSEL : L. Senevirathne for the Petitioner.
F. Jameel ASG for the Respondent.

ARGUED &
DECIDED ON: 24.01.2017

A.H.M.D. NAWAZ, J.

This Court heard both the Counsel for the Petitioner and learned Additional Solicitor General. By way of this application for judicial review the Petitioner seeks the following remedies.

1. A writ of certiorari to quash P8 dated 01.07.2013, which was a revocation of an Environmental Protection License (hereinafter referred to as EPL) granted to the Petitioner for a period between 08.11.2010 and 07.11.2013.

2. A writ of certiorari quashing the decision of the 5th Respondent – the Secretary to the Ministry of Mahaweli Development and Environmental Renewable Energy, which was a decision given upon an appeal made to the Secretary against the revocation of the environment protection license-P11(c).

The learned Counsel for the Petitioner argues that P8 dated 01.07.2013 was issued despite the fact that his stone crushing operation was not in progress at the time of the site inspection made by officers of Central Environment Authority. It has to be observed *though* that P8 narrates a violation of a condition attached to the EPL that was granted to the Petitioner namely, the Petitioner should maintain a clean environment in which the particles that are likely to escape from the crushing operation have to be eliminated by way of measures specified in the EPL.

The letter of revocation of the EPL (P8) dated 1.07.2013 recites that there has been an infringement of this condition. In any event the Petitioner made use of his statutory right of appeal and he was afforded an opportunity of being heard at an inquiry conducted on 14.10.2013. At this inquiry, residents who were living in the vicinity of the site had been present and made representations before the Secretary to the Ministry. The Petitioner himself made representations on his behalf at this inquiry. Thus, this Court finds that as far as procedural impropriety is concerned, this requirement has been fully met by the statutory functionary affording an opportunity to be heard. It is evident that though some of the trees that were meant to prevent injurious metal particles flying into the vicinity were in a state of dilapidation, the Petitioner had not taken steps to ameliorate the conditions of this protective coverage.

The Secretary to the Ministry who conducted this inquiry has considered all the representations that were made before him. This Court does not find any grounds on which the decision of the Secretary could be vitiated. The Counsel for the Petitioner contended that the Secretary also recites as a ground for his decision the fact that the Petitioner lacked title to the land on which the operations were conducted. It was contended that this was not a requirement imposed by the statute. An administrative authority can take into account as relevant considerations grounds which are not even specified in a statute. In the light of the fact that people who live in the vicinity have to be protected from environmental depredations having regard to the fact that sustainable development certainly factors into its consideration a clean environment and a healthy neighborhood, more weight has been given by the Secretary to relevant considerations such as environmental pollution and clean environment and in a situation where the statuary functionary has taken due account of relevant considerations, the fact that the secretary has referred to lack of title on the part of the petitioner to the land on which the petitioner is carrying on his business is not grave enough to invest the decision of the Secretary with *Wednesbury* unreasonableness. In the circumstances, this Court cannot conclude that the decision maker acted unreasonably in the *Wednesbury sense*. In other words the

decision is not "so unreasonable that no reasonable authority could have come to it"-vide ***Associated Provincial Picture Houses Ltd v Wednesbury Corporation.***[1]

This Court wishes to reiterate that in matters of judicial review this Court is not concerned whether a decision is right or wrong. The issue is not whether a decision of a statutory functionary is right or wrong, nor whether the court agrees with it, but whether it is a decision which the Secretary in this case was lawfully entitled to make.

Given the above indicia, we find no reason to interfere with the decisions marked P8 & P11C which are sought to be challenged in these proceedings. Therefore, we refuse the application of the petitioner.

JUDGE OF THE COURT OF APPEAL

P. PADMAN SURASENA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

KRL/-

[1] (1948) 1 KB 223-For a discussion of this case which places it in the political and social context of its time, see M. Taggart, "Reinventing Administrative Law" in N. Bamforth and P. Leyland (eds), *Public Law in a Multi-Layered Constitution* (Oxford, Hart Publishing, 2003), 311.