

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

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

**CA (Writ) Application No:
142/2019**

1. M. I. Anvardeen,
Ward No. 1,
Erukkalampiddy.
2. M. S. M. Haris,
Ward No. 8,
Erukkalampiddy.
3. M. Asfan,
Ward No. 9,
Erukkalampiddy.
4. J. M. Jabir,
Ward No. 09,
Erukkalampiddy.
5. R. B. M. Nisthar
Ward No. 1,
Erukkalampiddy.

Also:

The President,
Erukkalampiddy Fishermen Co-Operative
Society,
Main Street,
Erukkalampiddy.

6. I. J. Rizathu
Ward No. 8,
Erukkalampiddy.
7. H. M. M. Niyas,
Ward No. 6,
Erukkalampiddy.
8. A. H. Junaideen
Ward No. 5,
Erukkalampiddy.
9. Erukkalampiddy Fishermen
Co-Operative Society,
Main Street,
Erukkalampiddy.

PETITIONERS

-Vs -

1. D. K. Chandrakeerthi,
Director General,
Department of Coast Conservation and
Coastal Resources Management,
4th Floor, New Secretariat Building,
Maligawatte,
Colombo 10.
2. Chandana Sooriyabandara,
Director General,
Department of Wildlife Conservation,
811 / A, Jayanthipura Main Road,
Battaramulla 10120.

3. P. S. M. Charles,
Director General,
Sri Lanka Customs,
No. 40 Main Street,
Colombo 11.
- 3A Sunil Jayarathna,
Director General,
Sri Lanka Customs,
No.40, Main Street,
Colombo 11.
- 3B Major General Vijitha Ravipriya,
Director General,
Sri Lanka Customs,
No.40, Main Street,
Colombo 11.
4. Dr. N. Wedasinghe,
Director General,
Department of Animal Production and
Health,
13 Colombo-Kandy Road,
Kandy 20400.
- 4A Dr. K. D. Ariyapala,
Director General,
Department of Animal Production and
Health,
13 Colombo-Kandy Road,
Kandy 20400.

5. Ginige Prasanna Janaka Kumara,
Director General,
Department of Fisheries and Aquatic
Resources, New Secretarial,
Maligawatta,
Colombo 10.
6. Central Environment Authority,
104 Denzil Kobbekaduwa Mawatha,
Baththaramulla.
7. P. B. Hemantha Jayasinghe,
Director General,
Central Environment Authority,
104 Denzil Kobbekaduwa Mawatha,
Baththaramulla.
8. National Aquaculture Development
Authority of Sri Lanka,
No. 41/1, New Parliament Road,
Pelawatte, Baththaramulla.
9. Nuwan Prashantha Madawan Archchi,
Chairman,
National Aquaculture Development Authority
of Sri Lanka,
No 41/1, New Parliament Road, Pelawatte,
Baththaramulla.
- 9A Jayantha Wijeratne,
Chairman,
National Aquaculture Development
Authority of Sri Lanka,
No. 41/1 New Parliament Road,
Pelawatte, Battaramulla.

10. Hon. P. Harison,
Minister of Agriculture, Rural Economic
Affairs, Livestock Development,
Irrigation and Fisheries and Aquatic
Resources Development,
Ministry of Agriculture, Rural Economic
Affairs, Livestock Development,
Irrigation and Fisheries and Aquatic
Resources Development,
No. 492, R. A. De Mel Mawatha,
Colombo 03.

10A Hon. Douglas Thevaanantha,
Minister of Fisheries and Aquatic
Resources,
New Secretariat, Maligawatte Road,
Colombo 10.

11. Divisional Secretary,
Divisional Secretariat,
Mannar.

12. Taprobane Frozen Food (Pvt) Ltd.,
Badulla Watte,
Haldanduwana,
Dankotuwa.

13. Abdual Jabbar Rakeeb,
Ward No. 05,
Erukalampiddy.

14. Abdual Jabbar Wasil,
Ward No. 05,
Erukalampiddy

15. A. I. M. Musammil,
Chairman,
Central Environment Authority
104 Denzil Kobbekaduwa Mawatha,
Baththaramulla.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Shantha Jayawardena with Azra Basheer and Thishya Jayasundara for the Petitioners.

Navodi de Zoysa, SC for the 1st to 11th and 15th Respondents.

Saliya Peiris, PC with Farhad Jiffry for the 12th Respondent.

Sanjeeva Jayawardena, PC with Ms. L. Warusawithana for the 13th Respondent.

Written submissions tendered on:

04.09.2023 and 31.10.2023 by the Petitioners.

13.09.2023 by the 12th Respondent.

04.10.2023 by the 1st to 11th and 15th Respondents.

Argued on: 03.11.2021, 21.02.2022, 21.09.2022, 26.10.2022 and 13.06.2023.

Decided on: 02.05.2024.

S.U.B. Karalliyadde, J.

The subject matter of this Writ Application is a shrimp farm project situated in Erukkalampiddy in Mannar. The Taprobane Frozen Food (Pvt) Ltd. (the 12th Respondent)

made an Application dated 30.07.2018 (1R1) under the Coast Conservation and Coastal Resources Management Act, No. 57 of 1981 (as amended) (the Act) seeking a permit to start the said shrimp farm project. In pursuant to that application, the Director General of the Department of Coast Conservation and Coastal Resources Management, the 1st Respondent took steps to hold a meeting to discuss the matter with the relevant parties/authorities, namely, the Pradeshiya Sabha of Pesalai in Mannar, Divisional Secretariat Mannar, Department of Fisheries and Aquatic Resources, Department of Wildlife Conservation, National Aquatic Resources Research and Development Agency, National Aquatic Development Authority and the Central Environmental Authority (1R2/1R3). Accordingly, a meeting was held at the Coast Conservation and Coastal Resource Management Department (the CC&CRMD) on 13.08.2018 (1R3) and considering the possible environmental and socio-economic impacts due to the proposed shrimp farm project the CC&CRMD took a final decision to carry out an Initial Environmental Examination (the IEE) to consider granting approval to the said shrimp farm project. The CC&CRMD by the letter dated 29.08.2018 marked as R17 requested the 12th Respondent to submit an IEE Report (IEER) for the proposed shrimp farm project addressing all matters referred to in the Terms of Reference (TOR) (marked as R17A) attached to the said letter for it to be reviewed by the Technical Evaluation Committee (the TEC). Thereafter, the 12th Respondent submitted the IEER marked as P21. At the meeting held on 12.10.2018 at the CC&CRMD, a decision was taken by the TEC to conduct a joint field inspection after considering and evaluating the IEER (1R5). Thereafter, a joint field inspection was carried out on 22.10.2018 (1R6(a) to 1R6(e)) with the participation of the officials of the relevant authorities (1R6(f) to 1R6(g)). Thereafter, by the letter dated

26.10.2018 marked as 1R7, the CC&CRMD called for comments on the project from the relevant authorities. The Central Environmental Authority (the CEA) (1R8(a)), National Aquatic Resources Research and Development Agency (1R8(b)), Department of Wildlife Conservation (1R8(c)) and the Ministry of Mahaweli Development and Environment (1R8(d)) submitted their comments/observations/recommendations.

By 1R8(a), the CEA informed, *inter alia*, that it requires a classification whether an Import Risk Analysis has been done for the importation of *Vannamei* species which the 12th Respondent wanted to have in the shrimp farm and in pursuant to which the CC&CRMD by the letter marked as 1R9(a) called for recommendations of the National Aquatic Development Authority regarding the impacts of introducing *Vannamei* shrimp. The National Aquatic Development Authority responded to 1R9(a) by a letter dated 07.11.2018 (1R9(c)) stating that an Import Risk Assessment was conducted and the Report (1R9(b)) has already been sent to the CC&CRMD. By the letter dated 12.07.2018 marked as R7, the National Aquaculture Development Authority, the 8th Respondent informed the Director General of the Department of Fisheries and Aquatic Resources (the 5th Respondent), that the 8th Respondent had granted the approval to the 12th Respondent to operate Specific Pathogen Free *Vannamei* (SPF *Vannamei*) hatchery. By the letter marked as 1R8(c)/R4A, the Department of Wildlife Conservation informed the 1st Respondent that it has no objection to the operation of the shrimp farm project subject to the terms and conditions stipulated in that letter and by letter marked as 1R8(d) the Ministry of Mahaweli Development and Environment after considering the IEE granted approval for the project subject to fulfilling the terms and conditions stipulated therein.

Thereafter, the Department of Animal Production and Health issued a letter dated 16.07.2018 marked as 1R10(a) stating that subject to the conditions mentioned in that letter the 12th Respondent could be allowed to import *Penaeus Vannamei* live shrimp from Hawaii USA. A permit dated 09.01.2019 marked as P22/1R11/R4 valid from 09.01.2019 to 08.01.2020 was issued to the 12th Respondent for the shrimp farm project in terms of Section 14 of the Act stipulating the conditions. The Aquaculture Management Licences valid from 08.04.2018 to 29.02.2020 (1R12(a) and (1R12(b))) were issued by the National Aquaculture Development Authority to commence and continue the operational activities of the *Vannamei* shrimp farm. By the letter dated 03.01.2018 (1R13(c)), the National Aquatic Development Authority informed the Director General of the Department of Fisheries and Aquatic Resources that it has granted the approval for the operation of the *Vannamei* shrimp hatchery to the 12th Respondent. The Department of Fisheries and Aquatic Resources issued permits dated 14.07.2018 and 16.01.2018 marked as 1R13(a)/R9A and 1R13(b)/R9 respectively to the 12th Respondent for the importation of *Vannamei* shrimp. A letter marked as 1R17 was issued by the National Aquaculture Development Authority confirming that the samples tested were in conformity with the requirements of the National Aquaculture Development Authority. According to the documents marked as 1R13(d) to 1R13(f), the importations had been done after conducting necessary investigations by the Veterinary Research Institution. When considering all the above-stated facts and circumstances the Court can be satisfied that the 12th Respondent has commenced and continued the operation of the shrimp farm after obtaining the necessary approvals/permits.

The Petitioners allege that the said shrimp farm has been built clearing mangroves which have a direct ecological and livelihood impact on the fishermen of the coastal areas of Erukkalampiddy. The position of the Petitioners is that the livelihood of the local community in Erukkalampiddy is primarily based on traditional fishing and the mangroves provide numerous benefits to the local community in Erukkalampiddy while protecting against storm surges and coastal erosions. Moreover, the introduction of *Vannamei* shrimp which is non-native would cause severe damage to the native fish, prawns and other sea creatures and the ecosystem if the shrimp from the project escape/leak into the Erukkalampiddy lagoon. The Petitioners allege that the shrimp farm has been constructed in the coastal zone which is protected under the Act and the IEER is incorrect, inaccurate and biased toward the 12th Respondent. The Petitioners further allege that the 12th Respondent has not obtained a permit from the Director General of Wild Life under Section 37(1) of the Fauna and Flora Protection Ordinance, No. 02 of 1937 (as amended) for the importation of shrimp and illegally, without a permit has constructed the shrimp farm and commenced operations. The Petitioners further allege that the construction of the shrimp farm and importation of the *Vannamei* shrimp has been done without the necessary approval and/or permits.

The position of the Petitioners is that the IEER does not satisfy the Sri Lanka Coastal Zone and Coastal Resource Management Plan - 2018 prepared in terms of Section 12(1) of the Act published in the Extraordinary Gazette No. 2072/58 dated 25.05.2018 (P23) and therefore a permit under Section 14 of the Act could not have issued acting upon such IEER. The Petitioners allege that when considering the possible environmental impacts of the shrimp farm project, an IEER is not sufficient to determine whether a permit should be

issued under Section 14 for the reason that the public had no opportunity to comment on the contents of the IEER and therefore the permit marked as P22 has been issued in violation of natural justice. The position of the Petitioners is that the public could have raised their concerns only if an Environmental Impact Assessment (EIA) was called and whether to issue a permit for the project could have decided only upon calling an EIA. Under the above-stated circumstances, the Petitioners argue that the permit marked as P22 is illegal and *ultra vires* the provisions of the Act. Therefore, invoking the Writ jurisdiction of this Court the Petitioners seek the following substantial reliefs, *inter alia*,

- (c) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the Permit marked P22 issued to the 12th Respondent for the shrimp farm project;
- (d) Grant and issue a mandate in the nature of Writ of Mandamus directing the 1st Respondent to take steps/action in terms of the Coast Conservation and Coastal Resource Management Act, 57 of 1981(as amended) and/or other applicable laws, to remove the 12th Respondent's said shrimp farm project and restore the land/premises/Coastal Zone and the environment in the area affected by the 12th Respondent's Project to its original/ natural condition;
- (e) Grant and issue a mandate in the nature of a Writ of Mandamus on the 2nd Respondent directing to take steps/action under the Fauna and Flora Protection Ordinance No. 02 of 1937 (as amended) against the 12th Respondent in respect of importing non-indigenous species "SPF Vannamei Shrimp" and/or "P. vannamei shrimp" into Sri Lanka without a permit issued by the 2nd Respondent under Section 37(1) of the Fauna and Protection Ordinance No. 02 of 1937 (as amended) and remove the said species, namely, "SPF Vannamei Shrimp" and/or "P. vannamei shrimp" and restore the Coastal

Zone and the environment in the area affected by the 12th Respondent's Project to its original/ natural condition;

(f) Grant and issue a mandate in the nature of a Writ of Prohibition on the 1st Respondent prohibiting from extending/renewing the permit marked P22 issued to the 12th Respondent's for the said shrimp farm project introducing SPF Vannamei Shrimp and/or *P. vannamei* shrimp;

(g) Grant and issue a mandate in the nature of a Writ of Prohibition on the 2nd Respondent prohibiting from issuing a permit to the 12th Respondent under Section 37(1) of the Fauna and Protection Ordinance No. 02 of 1937 (as amended) to import the non-indigenous species "SPF Vannamei Shrimp" and/or "*P. vannamei* shrimp" into Sri Lanka;

(h) Grant and issue a mandate in the nature of a Writ of Prohibition on the 3rd Respondent prohibiting from permitting the 12th Respondent to import "SPF Vannamei Shrimp" and/or "*P. vannamei* shrimp" into Sri Lanka.

The Petitioners allege that the 12th Respondent has imported two shipments of *Vannamei* shrimp without obtaining a permit under Section 37(1) of the Fauna and Flora Ordinance. The learned President's Counsel appearing for the 12th Respondent argues that it is not required to obtain a permit under the Fauna and Flora Ordinance as the permit for the importation of the shrimp was obtained from the Director General of the Department of Fisheries and Aquatic Resources (the 5th Respondent) under the powers vested with him by the Gazette No. 1036/13 dated 16.06.1998 marked as R8. In terms of the Gazette marked as R8, without obtaining a permit from the Director of Fisheries and Aquatic Resources,

no person could import or export any live egg, roe or spawn of any fish and such permits should be issued in Form “F” set out in Part IV of the Schedule to the Gazette. In the instant Application, the permits for the importation of live fish marked as 1R13(a)/R9A and 1R13(b)/R9 had been issued to the 12th Respondent by the 5th Respondent. Therefore, I am of the view that the necessity does not arise for obtaining a permit under the Fauna and Flora Ordinance since the approvals/permits for importation have already been granted by the relevant Authority.

Another allegation made by the Petitioners is that the necessary approvals and/or permits have not been obtained for the construction of the shrimp farm and importation of the *Vannamei* shrimp. In terms of the letter marked as 1R9(c), the Minister of Fisheries and Aquatic Resources Development has taken a policy decision on 30.09.2011 to introduce *Litopenaeus Vannamei* to Sri Lanka except for the North Western province and the shrimp farm project in question has been approved at the Investment Facilitation, Steering Committee meeting held on 16.02.2017. In terms of the letter marked as 1R13(c), the Minister of Fisheries and Aquatic Resources Development has granted approval for the implementation of the project and the National Aquaculture Development Authority has granted approval for the 12th Respondent to operate a SPF *Vannamei* hatchery. After consulting/obtaining approval of the relevant authorities, in terms of Section 14 of the Act a permit for the development activity marked as P22, Aquaculture Management Licences marked as 1R12(a) and (1R12(b)) and permits for importation of *Vannamei* shrimp marked as 1R13(a)/R9A and 1R13(b)/R9 were issued to the 12th Respondent by the CC&CRMD, the National Aquaculture Development Authority and the Department of Fisheries and Aquatic Resources respectively. Considering the above-stated facts, this Court sees no

merit in the argument of the Petitioners that necessary approvals and/or permits have not been obtained in relation to the shrimp farm project.

Now I will address my mind to the Petitioners' argument that the permit marked as P22 is illegal and *ultra vires* the provisions of the Act. The Petitioners argue that the IEE is not sufficient to grant the permit and considering the adverse environmental impacts of the project an EIA which the public could raise their concerns should have been carried out instead of an IEE. In terms of Section 16 of the Act, when an Application is made to obtain a development permit under the Act, the Director General of the Department of Coast Conservation and Coastal Resources Management has the power to decide either to carry out an IEE or an EIA or both such reports. Section 16(1) of the Act reads thus,

“Upon receipt of an application for a permit to engage in a development activity within the Coastal Zone as required by subsection (3) of section 14, the Director-General may require the applicant to furnish an initial environmental examination report or an environmental impact assessment report relating to the development activity as the case may be, or both such reports. It shall be the duty of the applicant to comply with such requirement. Every initial environmental examination report or environmental impact assessment report shall contain such particulars as may be prescribed.”

In terms of Section 16(1) of the Act, it is clear that the Director General of the Department of Coast Conservation and Coastal Resources Management has the discretion either to call an IEE or EIA or both such reports. Moreover, in terms of Section 16(2C) of the Act only if the Director-General considers that an EIA report is necessary to arrive at a decision after considering an IEER submitted to him under Section 16(2A), then he may require the applicant to submit an EIA report. Therefore, it is clear that it is the 1st Respondent who

has the power to decide whether to call for an IEE or EIA or both such reports and if he decides to call for an IEE and decides that the IEE is not sufficient to arrive at a decision, he has the power to call for an EIA. The Petitioners argue that the 1st Respondent should have called an EIA for the reason that if an EIA was called only the public could express their views and raise concerns regarding the project. The decision to call for an IEE has been taken by the 1st Respondent acting under the powers vested on him under the Act and this Court has no expertise to decide whether the IEE is sufficient or whether he should have called an EIA in deciding to issue the permit. This Court in the case of *Environmental Foundation Limited Vs. Central Environmental Authority*,¹ held that;

“This court would not substitute its discretion for that of the expert but would interfere with its exercise if it is sought to be exercised in an arbitrary manner or in matters outside the limits of the discretionary authority conferred by the legislature or on considerations extraneous to those laid down by the legislature. Thus, this court cannot issue a writ of mandamus directing the first respondent to call for an EIAR in respect of the said project. The discretion to call for an EIAR or IEER has to be exercised by the first respondent and by the first respondent only. Any clear departure from the objects of the statute is objectionable and renders the act invalid in law”

In *Nirmal Anrudha Madanayaka and Others Vs. Director General, Department of Coast Conservation and Coastal Resources Management and Others*², where the Petitioners, in that case, have taken up an argument similar to the case at hand, citing *Environmental*

¹ (2006) 3 SLR 57.

² CA (Writ) Application No. 54/2021, CA Minutes dated 27.04.2021.

Foundation Limited Vs. Central Environmental Authority (supra) Arjuna Obeyesekere, J. (P/CA) held that;

“Thus, it is mandatory that either an IEE or an EIA must be carried out. Once an IEE is carried out, the decision whether an EIA should also be carried out depends on the contents of the IEE Report. In this regard, it is important to note that it is the 1st Respondent who prepared the TOR to be followed by the Project Proponent, and that it is the 1st Respondent who is in the best position to decide if an IEE is sufficient.”

In the Application at hand, I am of the view that the 1st Respondent has not exercised the discretion vested upon him under Section 16(1) of the Act in an arbitrary manner or outside the limits of the discretionary authority conferred to him by the Act.

The Petitioners further argue that the IEER does not satisfy the Sri Lanka Coastal Zone and Coastal Resource Management Plan - 2018 marked as P23 and therefore a permit under Section 14 of the Act should not have been issued upon such IEER. In response, the learned President’s Counsel appearing for the 12th Respondent submitted that as per the letter marked as R17, the 1st Respondent has requested the 12th Respondent to submit an IEER in terms of the TOR marked as R17A and accordingly the 12th Respondent had prepared the IEE and submitted the IEER. When taking into consideration the TOR marked as R17 and the IEER marked as P21, this Court observes that the IEER submitted by the 12th Respondent is in conformity with the TOR marked as R17. Moreover, it is also observed that the TOR marked as R17 corresponds with the general guidelines for the preparation of the IEE set out in Paragraph 6.6.3 in the Sri Lanka Coastal Zone and Coastal Resource Management Plan - 2018 marked as P23. Therefore, this Court cannot agree with the contention of the Petitioners that the IEER does not satisfy the Sri Lanka Coastal Zone and

Coastal Resource Management Plan - 2018. Considering the above-stated facts and authorities this Court is of the view that the permit marked as P22 is neither illegal nor *ultra vires* the provisions of the Act.

The learned SC appearing for the 1st to 11th and 15th Respondents brought the attention of this Court to the fact that the permit marked as P22 has been issued for the period from 09.01.2019 to 08.01.2020 for the purpose of granting the approval to commence the development activity within the coastal zone. In terms of Section 14 of the Act, the applicant must complete the development within the period stipulated in the permit and if the permit holder is unable to complete the development activity within such period, he should make an application to renew the permit. After issuance of the permit marked as P22, the construction work of the shrimp farm has been completed and by now the 12th Respondent is exporting the harvest of the shrimp farm. The permit that the Petitioners seek to quash has already lapsed after the expiration of the duration of the period mentioned in the permit and therefore the relief prayed for in prayer (c) to issue a Writ of Certiorari to quash the permit marked as P22 has now become futile. Dr. Sunil Coorey in Principles of Administrative Law in Sri Lanka (4th Edn,) at page 1172 has stated that,

“Certiorari will not be issued to quash a particular exercise of power if it be futile to do so because it is no more operational or it has had its effect.”

In the case of *Ratnasiri and others Vs Ellawala and others*³ Marsoof, PC. J (P/CA) (as he then was) held that;

³ (2004) SLR 180.

"This court is mindful of the fact that the prerogative remedies it is empowered to grant in these proceedings are not available as of right. Court has a discretion in regard to the grant of relief in the exercise of its supervisory jurisdiction. It has been held time and time again by our Courts that "A writ... will not issue where it would be vexatious or futile."

Considering all the above-stated facts, this Court is of the view that the Petitioners are not entitled to the reliefs prayed for in the Petition. Therefore, this Court dismisses this Writ Application. No costs ordered.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL