

**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 Writs of Certiorari and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.*

**CA (Writ) Application  
No. 49/2020**

1. W.A.V.S Priyantha  
No. A/374 /2, Pirivena Place,  
Ampara,
2. W.A.K. Wickramarachchi  
No. A/374/2, Pirivena Place,  
Ampara
3. RR. Liyanwela  
No. 30/30/4,  
Mayadunna, Weranketagoda.
4. P.Wimalaratna  
Galoya Metal Crusher  
Udayapura, Ampara.
5. W.L.I Shriyalatha  
No.22, Gurupura,  
Ampara.
6. G.W.S. Sunil Chandralal  
39/1, Madawalalanda,  
Ampara.
7. B.R. Udaya Kumara  
No.06, Saddathissapura,  
Ampara.
8. R.M.S.K. Ratnayake No. C/333/A,  
Eragama Road, Ampara,
9. A.G.D. Gunasekara  
No. 34, Tissapura  
Ampara
10. W.A.M.R.N. Najith Kumara  
No. A/9, Uhana Road  
Ampara

11. A.O.M.W. Akmeemana  
No. 05, Muwangala,  
Ampara
12. A.L. Haroon  
No. 26, 1st Lane,  
Ampara
13. W.E.C.I.J. Wijekon  
No. 100/43, 7th Lane,  
Nawagampura,  
Ampara
14. K.A. Gamunu Priyantha  
No. 200/21/7, 7th Lane,  
Nawagampura,  
Ampara.

**VS**

**Petitioners**

1. Regional Mining Engineer  
Geological Survey and Mines Bureau  
Regional Office, No. 669A, New Town,  
Ampara.

1A. Mr.A.R.M.Faris  
Regional Mining Engineer  
Geological Survey and Mines Bureau  
Regional Office, No. 669A, New Town,  
Ampara.

2A. D. Sajjana De Silva  
Acting Director General,  
Geological Survey and Mines Bureau,  
No. 569, Epitamulla Road, Pitakotte.

02B.Proff. H.M.R.Premasiri  
Director General,  
Geological Survey and Mines Bureau,  
No. 569, Epitamulla Road, Pitakotte.

3.Mr. H.S.N. De Soysa Siriwardena  
Divisional Secretary,  
Divisional Secretariat,  
Ampara.

03A. Ms.Sunethra Kumari

Divisional Secretary,  
Divisional Secretariat,  
Ampara.

4.Mr. Kamal Amaraweera  
Director General, Road Development  
Authority, Magameguma Mahamedura,  
No. 216, Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.

04A. Mr.L.V.S.Weerakoon  
Director General,  
Road Development Authority,  
Magameguma Mahamedura,  
No. 216,  
Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.

5.S. Mohanraj  
Director General, Department of Irrigation,  
No. 230, Bauddhaloka Mawatha, Colombo  
07.

05A. Eng.Mr.A.Gunasekara  
Director General, Department of Irrigation,  
No. 230, Bauddhaloka Mawatha, Colombo  
07.

6. Mr. P.B. Hemantha Jayasinghe  
Director General, Central Environmental  
Authority,  
No. 104, Denzil Kobbekaduwa Mawatha,  
Battaramulla.

7. S.M. Chandrasena  
Minister of Environment, Wildlife, Land  
and Land Development,  
No. 1090, Sri Jayawardenapura Mawatha,  
Rajagiriya.

07A. Hon.Keheliya Rambukkwella Minister  
of Environment,  
No. 1090, Sri Jayawardenapura Mawatha,  
Rajagiriya.

### **Respondents**

Before: M. T. MOHAMMED LAFFAR, J.  
WICKUM. A. KALUARACHCHI, J.

Counsel: K. G. R. Chathurangani with K. A. Chandana for the Petitioner  
Navodi de Zoysa, SC for the Respondent

Argued on: Matter disposed by way of written submissions

Written Submissions on: 24.01.2024 (by the Petitioners)  
17.01.2024 (by the Respondents)

Decided on: 29.02.2024

**MOHAMMED LAFFAR, J.**

The Petitioners in this Application are seeking orders in the nature of Writs of Certiorari quashing certain decisions of the Respondents to cancel and/or refuse renewal of the Permits issued unto the Petitioners and *inter alia* Writs of Mandamus directing the Respondents to renew and/or abide by certain earlier decisions. In response, objections were raised, with Statement of Objections being submitted on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, as well as the 5<sup>th</sup> Respondent.

This Application concerns certain permits issued to the Petitioner under the Mines and Minerals Act, No. 33 of 1992. The Petitioners are identified as individuals conducting small-scale artisanal sand mining operations in the vicinity of the Gal Oya river and the bridge situated in Ampara and were previously holders of Artisanal Mining Licenses duly issued by the Geological Survey and Mines Bureau (GSMB) (as substantiated by the Petitioners in the tabulated contents of Paragraph 22 of the Petition). Thereafter, admittedly the said mining licenses have expired, and subsequent licenses have not been issued to the Petitioners. The Petitioners' primary complaint is that the Respondents have not thereafter issued licenses permitting them to carry out such mining operations within the range of the specified area.

Any individual desiring to engage in mining activities must obtain a license from the Geological Survey and Mines Bureau (GSMB) specifically authorizing such activities, subject to the terms and conditions delineated within the said license. The GSMB issues a variety of mining licenses, all of which are temporally limited. Typically, such licenses are granted for durations of less than one year, although in instances of industrial mining, licenses may extend for one year. Consequently, upon expiration of the validity period of a mining license, individuals are required to reapply to the GSMB for license renewal.

The fundamental rationale behind the temporal/time-based limitation of mining licenses is predicated on the presumption that circumstances surrounding the license issuance are subject to change. Consequently, the Authority consistently imposes a finite duration on licenses, thereby retaining the discretion to periodically assess the necessity for license renewal.

The Petitioners have been granted Artisanal Mining Licenses for river sand extraction in accordance with the provisions set forth in the Mines and Minerals Act, No. 33 of 1992 (marked 'P5(i)' to 'P5 (xiv)'). The mining sites of all Petitioners were situated in close proximity to the Gal Oya river and the bridge located in Ampara, specifically within a radius of 1 and 2 km from the Galoya bridge. This fact is acknowledged in the Petition, and the precise mining locations of each Petitioner are delineated in Paragraph 22 of the Petition.

It has consistently been the stance of all governmental stakeholders that a clearance distance of 1 km should be upheld on both sides of the bridge to mitigate any potential damages resulting from excessive sand mining.

However, multiple Applications for sand mining, including those from the Petitioners, have been received within the range of 1km to 2km. While a decision had been made at one point to allow sand mining beyond the 1km mark, resulting in the issuance of mining licenses to the Petitioners, concerns had arisen when numerous parties sought permission for mining within the

1km to 2km range. It was then understood by relevant government stakeholders that such extensive sand mining in close proximity to the bridge could lead to adverse effects on the bridge structure and negatively impact the natural equilibrium of river systems. The rapid expansion of riverbed and riverbank sand mining could potentially result in widespread environmental, social, and economic ramifications. Consequently, there was an urgent need to cease the issuance of mining licenses for river sand extraction within the 1km to 2km range to mitigate the adverse effects on the environment and the structural integrity of the Gal Oya bridge, had such activities been permitted.

On or around the 23.12.2019, a meeting had been convened at the District Secretariat office of Ampara, presided over by Wimalaweera Disanyake, State Minister of Environment and Wildlife. During this meeting, the aforementioned concern regarding sand mining activities near the Gal Oya bridge was raised. Subsequently, it was directed by the then State Minister that, in order to ensure the safety of the Gal Oya bridge, mining activities within a 2-kilometer radius from the bridge should be ceased. This directive was communicated to the Secretary of the Ministry of Environment and Wildlife by the District Secretary of Ampara through a letter dated 21.01.2020 (marked '1R1').

Pursuant to the aforementioned directive, Artisanal Mining Licenses within a 2-kilometer radius from the Gal Oya bridge were withheld. Consequently, the Welfare Society of Ampara Galoya River Permit Holders, Suppliers, and Transporters conveyed their concerns to the Minister of Land Development, Environment, and Wildlife via a letter dated 02.01.2020 (marked as '1R2').

Subsequently, on 05.02.2020, the Regional Mining Engineer, acting through the Senior Director (Mining), addressed a letter to the Director General of the GSMB elucidating the prevailing circumstances. The letter emphasized the necessity for conducting a thorough inquiry into specific matters outlined therein, advocating for the formation of a technical group and emphasizing the importance of conducting a field visit (marked '1R3'). In accordance with

these directives, a field visit has been conducted on 12.03.2020, with the participation of various state representatives, including the Divisional Secretary of Ampara, officials from the Road Development Authority, National Water Supply and Drainage Board (NWSDB), GSMB, and the Director of Irrigation - Ampara. Observations and recommendations were provided by the state representatives who partook in the field visit (marked '1R4(a)' to '1R4(d)').

Following a comprehensive review of all recommendations provided by relevant state representatives, a report was compiled by the Senior Mining Engineer, detailing and summarizing the findings of the field visit on 12.03.2020, and presenting his own recommendations (marked '1R5(a)'). Then it was determined that no mining licenses for river sand extraction would be issued within a 2-kilometer radius from the Gal Oya bridge.

Furthermore, additional field visits concerning the same matter had been conducted with the participation of pertinent government stakeholders on 27.04.2022 and 09.11.2022. Both field visits concluded that maintaining a safety buffer of 2 km on either side of the bridge is imperative to prevent damage to the Gal oya bridge and the pipeline upstream of the Gal oya bridge (marked '1R6' and '1R7').

These reports encompass the perspectives of all pertinent state representatives. Upon examination of these reports, it is evident that each state representative deliberated on whether mining activities within the 1km to 2km range should be permitted, considering their respective contexts. For instance, the Road Development Authority evaluated the potential impact of such mining activities on the Gal Oya bridge, while the Regional Irrigation Department assessed its potential impact on the Gal Oya lake.

Following a deliberative process, it has been ultimately determined that Artisanal Mining Licenses for mining activities within a 2 km radius from the Gal Oya bridge would not be granted to any party. As the mining sites of all

Petitioners were located within the 1km to 2km range from the Gal Oya bridge, the Petitioners' were not successful in having their licenses renewed.

It is submitted by the Petitioners that sand mining activities are legally permissible in certain other areas within the distance ranging from 1 km to 2 km surrounding the Adal Oya Bridge in Ampara, as well as the Kandy Road, Maha Oya Bridge, Polwatta Karana Bridge, and Kotapola Bridge, all situated within the Ampara region. They also submit that the principal causes of severe damage to bridges is attributed to the forceful velocity of floodwaters. The accumulation of sand dunes exacerbates the occurrence of floods by disrupting the natural flow of water. Additionally, the Petitioners are of the position that in view of the associated history and state policy supporting a 1-km distance from the Gal Oya River and Bridge according to which the Petitioners were previously granted permits at the designated sites, their licenses/permits need to be renewed.

However, in light of the aforementioned circumstances, it becomes apparent that subsequent to a meticulous examination comprising three distinct field visits, and upon the unanimous consensus of all pertinent state authorities, it has been conclusively determined that sand mining activities should not be authorized within a 2 km radius of the Gal oya bridge and river. This determination is grounded within the paramount objective of safeguarding both the natural environment and the pertinent infrastructural edifice. In this context, it is the view of this court that there exists no explicit statutory or legal obligation on the Respondents mandating issuance or renewal of any license thereto. Thus, I see no reasons that merit the grant of any of the writs prayed for by the Petitioners.

Furthermore, Prayer (b) seeks a Writ of Certiorari to quash any decision of the Respondents to revoke the permits granted to the Petitioners. However, there exists no imperative to grant this remedy since no decision has been made to revoke the permits bestowed upon the Petitioners. As pleaded in Paragraph 22 of the Petition, all permits issued to the Petitioners have reached the



expiration of their validity period. None of these permits were rescinded during their term. Given that the permits are now void due to the lapse of their validity period, the necessity to grant relief as per prayer (b) does not arise.

It is also imperative to note that Section 39 and 40 of the Mines and Minerals Act, which stipulates the right of appeal afforded to a licensee in instances where the licensee is aggrieved by a decision of the Geological Survey and Mines Bureau (GSMB) to either cancel or decline to renew the license provides an opportunity to appeal to the Secretary and therefrom to the Supreme Court. Therefore, it is evident that the Mines and Minerals Act provides a clear statutory remedy to an aggrieved licensee, mandating adherence to the prescribed procedure, rather than resorting to the Writ jurisdiction under Article 140, which constitutes a discretionary remedy. The Petitioners have not succeeded in substantiating, nor have they provided any rationale or, at the very least, notified the court as to the reasons behind their failure to utilize such prescribed appeal procedure.

For the reasons detailed hereinabove, I dismiss the Application of the Petitioners and make no order as to the costs of this Application.

*Application dismissed. No costs.*

JUDGE OF THE COURT OF APPEAL

**WICKUM. A. KALUARACHCHI, J.**

I agree.

JUDGE OF THE COURT OF APPEAL