

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

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

**Court of Appeal Application No. CA/WRT/0692/24**

**LANWA SANSTHA CEMENT  
CORPORATION(PRIVATE)  
LIMITED,**

Oruwala,

Athurugiriya.

**PETITIONER**

**Vs.**

**1. CENTRAL ENVIRONMENTAL,  
AUTHORITY,**

No. 104, Denzil Kobbekaduwa  
Mawatha,  
Battaramulla.

**2. P. B. HEMANTHA  
JAYASINGHE,**

Director - General,  
Central Environmental  
Authority,  
No. 104, Denzil Kobbekaduwa  
Mawatha,  
Battaramulla.

3. **BOARD OF INVESTMENT OF  
SRI LANKA,**

Level 24, West Tower,  
World Trade Centre,  
Colombo 01.

4. **RENUKA WEERAKOON,**

Director-General,  
Board of Investment of Sri  
Lanka,  
Level 24, West Tower,  
World Trade Centre,  
Colombo 01.

5. **HAMBANTOTA  
INTERNATIONAL PORT  
GROUP (PVT) LTD,**

Hambantota Maritime Center,  
Mirijjawila.

6. **SIAM CITY CEMENT LANKA  
LIMITED,**

Level 25, Access Tower II,  
No. 278/4, Union Place,  
Colombo 02.

7. **SECRETARY,**

Ministry of Environment,  
Sobadam Piyasa,  
No. 416/C/1, Robert  
Gunawardana Mawatha,  
Battaramulla.

**RESPONDENTS**

**BEFORE** : **Mohammed Laffar, J.**

**P. Kumararatnam, J.**

**COUNSEL** : **Harsha Amarasekera, P.C, with Suren Gnanaraj and Sakuni Weeraratne instructed by M/S Neelakandan and Neelakandan for the Petitioner.**

**Nayomi Kahawita, S.S.C, for the 1<sup>st</sup>-4<sup>th</sup> and 7<sup>th</sup> Respondents.**

**Avindra Rodrigo, P.C, with Kasuni Jayaweera instructed by F.J. & G de Saram for the 5<sup>th</sup> Respondent.**

**Dr.Kanag-Iswaran, P.C, with Uditha Egalahewa, P.C, Laksman Jayakumar, Miyuru Egalahewa and Shenal Fernando instructed by Kanchan Senanayake for the 6<sup>th</sup> Respondent.**

**INQUIRY ON** : **04/12/2024.**

**DECIDED ON** : **20/12/2024.**

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**ORDER****P. Kumararatnam, J.**

The Petitioner instituted this Writ Application praying for the following relief in the Petition dated 28.10.2024.

- a) Issue notices on the Respondents;
- b) Call for the record from the 1<sup>st</sup> to 4<sup>th</sup> Respondents in relation to the operations of the 5<sup>th</sup> and 6<sup>th</sup> Respondents in the Hambantota International Port;
- c) Issue an order in the nature of a **Writ of Mandamus** directing the 1<sup>st</sup> to 4<sup>th</sup> Respondents to take all steps as are available in law to compel the 5<sup>th</sup> Respondent to ensure that the 6<sup>th</sup> Respondent does not unload, store and transport dust-emitting dry bulk cargo such as clinker in or at or out of the Hambantota International Port without the 5<sup>th</sup> Respondent and/or 6<sup>th</sup> Respondent having a valid and operative Environmental Protection Licence;
- d) Issue an order in the nature of a **Writ of Mandamus** directing the 1<sup>st</sup> to 4<sup>th</sup> Respondents to refrain from lifting the suspension currently in force and/or not to issue an Environmental Protection Licence to the 5<sup>th</sup> Respondent for port operations until corrective measures have been implemented to prevent the unloading, storing and transportation of dust emitting dry bulk cargo such as clinker in or at or out of the Hambantota International Port except through a ship unloader and closed conveyor belt, similar to that used by the Petitioner;
- e) Issue an order in the nature of a **Writ of Mandamus** compelling the 1<sup>st</sup> to 4<sup>th</sup> Respondents to ensure that the 5<sup>th</sup> Respondent strictly complies with the provisions of the National Environmental Act, its

Regulations and the directives including **P12, P13, P16, P17** and any other directives issued from time to time by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents;

- f) Issue an order in the nature of a **Writ of Mandamus** directing the 1<sup>st</sup> to 4<sup>th</sup> Respondents to prosecute the 5<sup>th</sup> Respondent under the National Environmental Act for permitting the 6<sup>th</sup> Respondent to unload, store and transport hazardous and dust-emitting dry bulk cargo such as clinker in or at or out of the Hambantota International Port without a valid and operative Environmental Protection Licence and in violation of the directives including **P12, P13, P16, P17** and any other directives issued from time to time by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents;
- g) Issue an order in the nature of a **Writ of Mandamus** directing the 1<sup>st</sup> to 4<sup>th</sup> Respondents to prosecute the 6<sup>th</sup> Respondent under the National Environmental Act for causing environmental pollution and contravening the law;
- h) Issue an order in the nature of **Writ of Mandamus** directing the 1<sup>st</sup> to 4<sup>th</sup> Respondents to exercise their powers under the National Environmental Act to prevent, suspend and prohibit any person from unloading, storing and transporting hazardous or dust-emitting cargo for cement manufacturing using trucks, in or at or out of the Hambantota International Port except in accordance with the law and due approvals obtained from the 1<sup>st</sup> and 3<sup>rd</sup> Respondents;
- i) Issue an order in the nature of a **Writ of Mandamus** compelling the 1<sup>st</sup> to 4<sup>th</sup> Respondents to ensure that no environmentally hazardous and or dust-emitting materials including clinker are uploaded into and transported using trucks in or at or out of the Hambantota International Port;
- j) Issue an order in the nature of a **Writ of Mandamus** directing the 1<sup>st</sup> to 4<sup>th</sup> Respondents to prevent the 5<sup>th</sup> Respondent and/or 6<sup>th</sup> Respondent from stockpiling clinker and other hazardous dust-emitting material in the Hambantota International Port in

contravention of the law and without any environmental approvals and environmental safety precautions being implemented;

- k) Issue an order in the nature of a **Writ of Mandamus** directing the 1<sup>st</sup> to 4<sup>th</sup> Respondent to prevent the 5<sup>th</sup> and/or 6<sup>th</sup> Respondent from operating the warehouse at Lot No A17 of the Port Industrial Park Block A of the Hambantota International Port and storing any environmentally harmful and hazardous substances including steel slag and clinker in contravention of the law, without any environmental approvals and environmental safety precautions being implemented;
- l) Issue an order in the nature of a **Writ of Prohibition** prohibiting the 1<sup>st</sup> to 4<sup>th</sup> Respondents from allowing the 5<sup>th</sup> and or 6<sup>th</sup> Respondents from carrying out unloading, storage and transport of environmentally hazardous and or dust-emitting raw materials for cement manufacturing, in or at or out of the Hambantota Port using trucks, in violation of the law and the directives including **P12, P13, P16, P17** and any other directives issued from time to time by the 1<sup>st</sup> Respondent and or 3<sup>rd</sup> Respondent;
- m) Issue an order in the nature of a **Writ of Prohibition** prohibiting the 1<sup>st</sup> to 4<sup>th</sup> Respondents from allowing the 5<sup>th</sup> and or 6<sup>th</sup> Respondents from stockpiling clinker and other hazardous dust-emitting material in the Hambantota International Port in contravention of the law and without any environmental approvals and environmental safety precautions being implemented;
- n) Issue an order in the nature of a **Writ of Prohibition** prohibiting the 1<sup>st</sup> to 4<sup>th</sup> Respondents from allowing the 5<sup>th</sup> and or 6<sup>th</sup> Respondents from operating the warehouse at Lot No A17 of the Port Industrial Park Block A of the Hambantota International Port and storing any environmentally harmful and hazardous substances including steel slag and clinker in contravention of the law, without any environmental approvals and environmental safety precautions being implemented;

**INTERIM ORDERS**

- o) Grant an interim order directing the 1<sup>st</sup>, 2<sup>nd</sup> and/or 3<sup>rd</sup>, 4<sup>th</sup> Respondents to immediately prevent the 5<sup>th</sup> and/or 6<sup>th</sup> Respondents from engaging in the unloading storing and transportation of hazardous or dust-emitting cargo for cement manufacturing, in or at or out of the Hambantota International Port other than in accordance with the law, pending the final determination of this application;
- p) Grant an interim order directing the 1<sup>st</sup>, 2<sup>nd</sup> and/or 3<sup>rd</sup>, 4<sup>th</sup> Respondents to stop the 5<sup>th</sup> Respondent and/or the 6<sup>th</sup> Respondent from in any way or manner permitting and/or authorising the unloading and transportation of hazardous or dust-emitting cargo for cement manufacturing in or at or out of the Hambantota Port using trucks within its premises pending the final determination of this application;
- q) Grant and interim order directing the 1<sup>st</sup>, 2<sup>nd</sup> and/or 3<sup>rd</sup>, 4<sup>th</sup> Respondent to prevent the 5<sup>th</sup> and/or 6<sup>th</sup> Respondent from stockpiling clinker and other hazardous dust-emitting material in the Hambantota International Port in contravention of the law and without any environmental approvals and environmental safety precautions being implemented, pending the final determination of this application;
- r) Grant an interim order directing the 1<sup>st</sup>, 2<sup>nd</sup> and/or 3<sup>rd</sup>, 4<sup>th</sup> Respondents to seal and/or suspend the operation of the warehouse at Lot No A17 of the Port Industrial Park Block A of the Hambantota International Port used by and or operated by the 5<sup>th</sup> Respondent and/or 6<sup>th</sup> Respondent to store imported steel slag in contravention of the law, without any environmental approvals form the 1<sup>st</sup> and 3<sup>rd</sup> Respondent and environmental safety precautions being implemented;
- s) Grant costs; and

- t) Grant such other and further relief as to Your Lordship's Court shall seem fit and meet.

This matter was supported on 29.10.2024 and interim relief was issued as prayed for in paragraphs “o, p, q and r” in the Petition.

**The background of the case *albeit* as follows;**

The Petitioner, being a registered company under Section 17 of the Board of Investment Law (Hereinafter referred to as “BOI”) and driven by the investment proposal of the Master Plan of Hambantota International Port, has invested more than USD 151 Million to establish a cement griding, blending and packing plant at Mirijjawila Export Processing Zone of the BOI adjacent to the Port of Hambantota (Hereinafter referred to as “the Manufacturing Plant”).

The Petitioner states that it has been issued an Environment Protection Licence (Hereinafter referred to as “EPL”) in terms of the National Environment Act (Hereinafter referred to as “NEA”) by the 3<sup>rd</sup> Respondent with the concurrence of the 1<sup>st</sup> Respondent to operate its cement manufacturing plant at the Export Processing Zone, Mirijjawila, Hambantota and transport relevant raw materials from the Hambantota International Port to its manufacturing plant through a conveyer belt. The Petitioner has the EPL valid till 11<sup>th</sup> September 2025.

The Petitioner filing this Writ Application contends that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents had failed and neglected to enforce the law against the 5<sup>th</sup> Respondent for failure to fulfill their statutory duty to protect the environment. It is further alleged that the 5<sup>th</sup> Respondent had wrongfully and unlawfully allowed the 6<sup>th</sup> Respondent and its agents to emit or discharge dangerous and hazardous pollutants to the atmosphere within the premises of the Hambantota International Port by unloading, storing and transporting clinker and other similar dust-emanating raw materials in contravention of the terms and conditions of its EPL and the directives issued. It is further alleged that above mentioned activities have been



continued by the 6<sup>th</sup> Respondent after the suspension of their EPL on 15.07.2024.

Learned President's Counsel for the 6<sup>th</sup> Respondent moving this Court not to extend the interim order submits to this Court that the Petitioner filing this application not out of genuine legal necessity, but rather to serve its collateral interest and gain an undue advantage in the cement industry, where the 6<sup>th</sup> Respondent and the Petitioners are direct competitors.

Although the Petitioner submitted that the EPL was suspended on 15.07.2024, the learned President's Counsel for the 6<sup>th</sup> Respondent brought to the notice of this court that 1<sup>st</sup> Respondent by letter dated 19.09.2024, informed the 5<sup>th</sup> Respondent that until a new EPL is issued, the 5<sup>th</sup> Respondent could continue its operations on the terms and conditions contained in the previous license. Therefore, 6<sup>th</sup> Respondent is not required to obtain a separate EPL for their raw material unloading operations within the premises of the Hambantota International Port. Further, the 6<sup>th</sup> Respondent is not transporting its raw materials through the Industrial Park, Mirijjiwila and is instead transporting them to its plant in Galle through the port access road. The raw material is transported in trucks covered by a tarpaulin to minimize dust emission. Additionally, dedusting hoppers are used for unloading raw material (Clinker) and clinker yards are covered by a tarpaulin and the road to the Clinker yard is routinely sprayed with water to suppress dust generation from transporting clinker through unpaved road. Due to these precautions, no any action was filed by anybody or a group against the 6<sup>th</sup> Respondent for environment pollution. Hence, the learned President's Counsel contended that the only reason filling this Writ Application is the business rivalry.

The learned President's Counsel for the 5<sup>th</sup> Respondent submitted that this Writ Application is a result of a dispute between the Petitioner and the 6<sup>th</sup> Respondent and the Petitioner had made several complaints

against the operations of the 6<sup>th</sup> Respondent, which led to the suspension of the EPL issued to them. At the meeting held on 30.07.2024 the 3<sup>rd</sup> Respondent had lifted the suspension for three months subject to monitor the port activities, storage yards at port premises and material unloading operations by the 6<sup>th</sup> Respondent as well as the Petitioner. Until such time the 5<sup>th</sup> Respondent did not allow the 6<sup>th</sup> Respondent to carry out any activities within the Port of Hambantota. On 22.10.2024, unloading of the raw material was re-commenced and was inspected by the officials of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.

It is the contention of the learned President's Counsel for the 5<sup>th</sup> Respondent that dust emission is an inevitable byproduct of any raw material unloading process. The 5<sup>th</sup> Respondent too agree with the test report submitted by 6<sup>th</sup> Respondent which is marked as "5R-12".

The learned Senior State Counsel who appeared for the 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Respondents submits that as per the Court order the 3<sup>rd</sup> Respondent (BOI) had conducted a site inspection at the industrial premises of 5<sup>th</sup> Respondent on 13.11.2024 with the attendance of the representatives of the 1<sup>st</sup> Respondent (CEA) and the joint inspection report marked 3R1 submitted to this Court.

Further, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents had carried out joint inspections for compliance monitoring purposes at the premises of the 5<sup>th</sup> Respondent and at those of the Petitioners in their capacity as the Regulator and the Facilitator, respectively. Thereafter, the suspension of EPL of 5<sup>th</sup> Respondent was temporary lifted and the 5<sup>th</sup> Respondent was allowed to carry out their operations subject to the recommendations given by the 3<sup>rd</sup> Respondent (BOI). The lifting was subjected to joint inspection of the activities of 6<sup>th</sup> Respondent. This was informed to the 5<sup>th</sup> Respondent by the 3<sup>rd</sup> Respondent (CEA) by letter dated 18.10.2024.

Although another site inspection was carried out on 23.10.2024 by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents at the premises of the 5<sup>th</sup> Respondent, loading

and unloading operations were observed to be suspended due to bad weather condition.

The limited objections filed by 1<sup>st</sup> and 2<sup>nd</sup> Respondents also corroborate the factors submitted by the 3<sup>rd</sup>, 4<sup>th</sup>, and 7<sup>th</sup> Respondents through the learned Senior State Counsel.

At present stock filing operations are subject to compliance monitoring and necessary recommendations by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Further lifting of suspension of EPL of 5<sup>th</sup> Respondent is subjected to further joint site inspection to monitor of the operations of the 6<sup>th</sup> Respondent.

In **Billimoria v Minister of Landas, Land Development and Mahaweli Development and two Others** [1978-79] 1 SLR 19 Samarakoon C.J. held that:

*“In considering the question we must bear in mind that a stay order is an incidental order made in the exercise of inherent or implied powers of Court. Without such power the Court’s final orders in most cases would if the Petitioner is successful be rendered nugatory, and the aggrieved party will be left holding an empty decree worthless for all purpose”.*

In **Weerasooriya v Sidambaram Chetty** 8 CWR 238 Bertram C.J, held that:

*“ the interest of justice therefore required that a stay order be made as an interim measure. It would not be correct to judge stay orders in the same strict manner as final orders. Interim orders by their very nature must depend a great deal on a judge’s opinion as to the necessity for interim action”.*

In this case the Petitioner and the 6<sup>th</sup> Respondent are engage in cement production in the country. The Petitioner’s cement manufacturing plant is situated in Mirijjiwila, Hambantota. The 6<sup>th</sup> Respondent’s cement manufacturing plant is located in Galle. The raw materials are transported to its plant by way of trucks covered by a tarpaulin. It is

pertinent to note that up to now no single application is filed against the 6<sup>th</sup> Respondent by a third party.

In this case the learned President's Counsel for the 6<sup>th</sup> Respondent submitted to this Court that due to this interim order the 6<sup>th</sup> Respondent could not unload 450.88 MT of clinker which remains onboard the ship and is valued at approximately Rs.7.3 million. As such his client has suffered a loss of Rs. 900 million to date. This was endorsed by the learned President's Counsel who appeared for the 5<sup>th</sup> Respondent as well.

After careful consideration of the submissions made by all parties, I conclude that the 6<sup>th</sup> Respondent will suffer more harm than the Petitioner if the interim order is extended.

Therefore, the interim order issued on 29.10.2024 against the Respondents is hereby vacated.

**JUDGE OF COURT OF APPEAL**

**M.T. Mohammed Laffar, J.**

**I Agree**

**JUDGE OF COURT OF APPEAL**