

**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* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA Writ Application No: 740/23**

Rohan D' Alwis,  
No. 11/1,  
Barns Avenue,  
Mount Lavinia.

**PETITIONER**

**-Vs-**

1. Ceylon Electricity Board,  
Sir Chittampalam A. Gardiner Mawatha,  
P.O. Box 50, Colombo 02.
2. N.S. Ilangakoon,  
The Chairman, Ceylon Electricity Board,  
Sir Chittampalam A. Gardiner Mawatha,  
P.O. Lox 50, Colombo 02.
3. K.P.U. Gunathilake,  
The Vice Chairman,  
Ceylon Electricity Board,  
Sir Chittampalam A. Gardiner Mawatha,  
P.O. Box 50, Colombo 02.

*Both of whom are members of the Ceylon  
Electricity Board.*

4. Tharindu Wimalasekara,  
Chief Electrical Engineer,  
Ceylon Electricity Board,  
Veyangoda  
No.70, Baduragoda Road,  
Veyangoda

5. Piyasenage Asoka Namal Ratnayake,  
No. 68/A/36,  
Isuru Mawatha,  
Yakkala.

**RESPONDENTS**

**Before:** S. U. B. Karalliyadde, J.

**Counsel:** S. K. Lankatilleka PC with Tharindu Weerasena and Ruchika Kishore  
instructed by Ramzi Batcha Associates for the Petitioner.

Ms. Zahri Zain DSG for the 1<sup>st</sup> to 4<sup>th</sup> Respondents.

**Written submissions tendered on:**

08.08.2024 by the Petitioners

**Argued on:** 29.07.2024

**Decided on:** 05.09.2024

**S. U. B. Karalliyadde, J.**

In the Petition to this Writ Application, the Petitioner has sought the substantive reliefs,

*inter alia,*

(b) Grant and issue a mandate in the nature of a Writ of *Certiorari* quashing the

decision contained in letter dated 03.11.2023 marked as P20 sent by the 4<sup>th</sup>

Respondent to supply electricity to the land or part thereof forming the subject matter of this application based on a request made by the 5<sup>th</sup> Respondent.

- (c) Grant and issue a mandate in the nature of a Writ of *Prohibition* preventing the 5<sup>th</sup> Respondent or any other unauthorized person other than the Petitioner from requesting for the supply of electricity to the land or part thereof forming the subject matter of this application belonging to the Petitioner.
- (d) Grant and issue a mandate in the nature of a Writ of *Prohibition* preventing the 1<sup>st</sup> to 4<sup>th</sup> Respondents or any one or more of them from supplying electricity to the land or part thereof forming the subject matter of this application belonging to the Petitioner.
- (e) Grant and issue a mandate in the nature of a Writ of *Mandamus* directing the 1<sup>st</sup> to 4<sup>th</sup> Respondents or any one or more of them to disconnect the electricity supply given to the said land or part thereof belonging to the Petitioner.
- (f) Grant and issue an *interim order* restraining and/or preventing the 1<sup>st</sup> to 4<sup>th</sup> Respondents or any one or more of them from supplying electricity to the said land forming the subject matter of this application without the consent of the Petitioner who is the owner of the land until the final determination of this application.

Nevertheless, when the matter was taken up for argument on 29.07.2024 the learned President's Counsel appeared for the Petitioner informed the Court that the Petitioner is pursuing only the reliefs sought in the prayers (b) and (e), precisely, issue a Writ of

*Certiorari* to quash the decision contained in the letter dated 03.11.2023 marked as P20 sent by the Chief Electrical Engineer of the Ceylon Electricity Board (the 4<sup>th</sup> Respondent) to the Petitioner informing that the Ceylon Electricity Board (the 1<sup>st</sup> Respondent) is taking steps to supply a temporary electricity connection on the request made by the 5<sup>th</sup> Respondent to the subject land of this Application which the Petitioner is claiming that he is the owner and occupier and a Writ of *Mandamus* directing the 1<sup>st</sup> to 4<sup>th</sup> Respondents to disconnect the electricity supply given to that land. Even though the notices of this Application with the annexures were served on the 5<sup>th</sup> Respondent he has neither appeared before the Court nor a representation made on his behalf and therefore the matter proceeded ex-parte against him. No statement of objections has been filed by the 1<sup>st</sup> to 4<sup>th</sup> Respondents resisting the Application of the Petitioner and at the Argument, the learned DSG appeared for them informed to Court that they do not object to the Court being granted reliefs seeking by the Petitioner.

The position of the Petitioner is that the subject land of this Application is an ancestral property of his family which is now owned and possessed by him and the 5<sup>th</sup> Respondent is neither a member of the family nor has any legal right to the land but claims it on a fraudulent deed. The Petitioner has instituted an action bearing No. 474/Land in the District Court of Minuwangoda against the 5<sup>th</sup> Respondent for vindication of his title to the subject land and ejectment of the 5<sup>th</sup> Respondent thereupon. Furthermore, an enjoining order has been obtained by the Petitioner against the 5<sup>th</sup> Respondent and that action has not yet been concluded. The Petitioner, on or about

10.02.2023 became aware that the 5<sup>th</sup> Respondent was attempting to obtain electricity to the land and he promptly by the letters dated 10.02.2023 and 09.10.2023 (marked as P17 and P18 respectively) informed the 4<sup>th</sup> Respondent about the afore-stated facts and requested him not to approve any request from any person to obtain electricity connection to the subject land, and further that if the electricity connection is given, irreparable loss and damage could be caused to him. However, disregarding the facts stated in P17 and P18, by the letter dated 03.11.2023 marked as P20 which the Petitioner seeks to quash by a Writ of *Certiorari*, the 4<sup>th</sup> Respondent informed the Petitioner that a decision has been made to provide electricity to the land temporary on the request of the 5<sup>th</sup> Respondent. Admittedly, the electricity has already been supplied to the land. The Petitioner argues that under the above-stated circumstances, the decision mentioned in P20 and the supply of electricity to the land is illegal, unreasonable, arbitrary and *ultra vires* to the provisions laid down in the Sri Lanka Electricity Act, No. 20 of 2009 (“the Act”).

It is the position of the Petitioner that the 1<sup>st</sup> Respondent is vested with powers to supply electricity only on a request of the owner/occupier of a property and in the instant Application since the owner of the property is the Petitioner, the 1<sup>st</sup> to 4<sup>th</sup> Respondents has acted unreasonable, arbitrary and *ultra vires* to the provisions in Sub-section (1) of Section 25 of the Act. Sub-section (1) of Section 25 of the Act provides that “*a distribution licensee shall on **any request by the owner or occupier of any premises within the Authorized Area of the licensee- (a) connect, supply and maintain the supply***

*of electricity to those premises; and (b) so far as may be necessary for that purpose, provide electric lines or electrical plant or both, subject to the provisions of this Part (Part II), any regulations made under this Part or under section 54, and the Electricity Supply Code (as set out in Schedule II to this Act)”. Janak de Silva, J. in H.K. Kumara Vs. The Ceylon Electricity Board and Others<sup>1</sup>, observed that the Electricity Board is under a statutory duty to provide an electricity connection to the **owner or occupier of any premises** within its authorised area provided all the legal requirements are satisfied. Further, in the case of *Ajantha Kumara Vs. Ceylon Electricity Board and Others*<sup>2</sup>, his Lordship has again held that,*

*“Section 25(1) of the Sri Lanka Electricity Act No. 20 of 2009 states that a distribution licensee shall on any request by the owner or occupier of any premises within the Authorized Area of the licensee connect, supply and maintain the supply of electricity to those premises and connect, supply and maintain the supply of electricity to those premises. The word "occupier" in an act pari materia, namely section 33(1) of the Electricity Act, No. 19 of 1950, was interpreted by Vythialingam J. in Municipal Council of Badulla v. Ratnayake<sup>3</sup> to mean a lawful occupier and not, for instance, a mere squatter.”*

In the instant action as soon as the Petitioner came to know that the 4<sup>th</sup> Respondent has decided to provide electricity to the land in dispute the Petitioner has raised his

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<sup>1</sup> CA (Writ) 100/2017, CA Minutes on 07.06.2019.

<sup>2</sup> 2019 1 SLR 42.

<sup>3</sup> (1978-79) 2 Sri LR 141.

objections by P17 and P18. Despite that objection, the 4<sup>th</sup> Respondent decided to provide electricity connection and supply to the land in dispute and informed that decision to the Petitioner by P20. When considering the above-stated facts, it is evident that by the time the decision mentioned in P20 was made, the 4<sup>th</sup> Respondent was aware that there is a dispute over the ownership and/or occupancy of the land for which the electricity supply had been requested. When there is a dispute regarding the ownership/occupation, the procedure to be followed by the 1<sup>st</sup> Respondent has been laid down in Section 39 of the Act.

As provided by Sub-section (1) of Section 39 of the Act in the event of a dispute relating to the connection and supply of electricity to a premises, it shall be referred to the Public Utilities Commission (the “Commission”) if the parties have not been able to resolve the dispute through any dispute resolution procedure prescribed by the Commission. Section 39(1) of the Act reads as follows.

- (1) *“The following disputes arising in connection with the supply or use of electricity shall be referred to the Commission by any party to the dispute:*
- (a) a dispute between a licensee and a tariff customer arising under Sections 25 to 30 or Schedules I, II or III to this Act;*
  - (b) any dispute (other than a dispute referred to in paragraph (a)) between a licensee and -*
    - (i) a tariff customer;*
    - (ii) another licensee, or*
    - (iii) any other affected party,*

*which the parties have not been able to resolve through any dispute resolution procedure prescribed by the Commission, despite the licensee using its best efforts to do so.*

- (2) *On a reference under paragraph (a) of subsection (1), the Commission shall mediate and resolve the dispute and on a reference under paragraph (b) of subsection (1), the Commission shall mediate and resolve the dispute, unless it decides that it is more appropriate for the dispute to be determined either by the courts or through arbitration.*
- (3) *The practice and procedure to be followed in the resolution of any such dispute shall be such as the Commission shall set out by rules made under the Public Utilities Commission of Sri Lanka Act, No. 35 of 2002 and this Act.*

Rules made by the Commission under Section 53 of the Act read with sub-sections (1) and (3) of Section 39 under the Extraordinary Gazette No. 1951/1 dated 25.01.2016 sets out the dispute resolution procedure for disputes arising between a licensee and any other affected party in Rule 3 and 4 as follows:

- (3) *A tariff customer or any other affected party who has a dispute specified under Rule 2(1)(a), (b) or (c) with a licensee and wishes to resolve such dispute may, for that purpose, send to the Deputy General Manager of the respective Distribution, Transmission or Generation licensee of Ceylon Electricity Board (CEB), or Head of Operations of Lanka Electricity*



*Company (Private) Limited (LECO) (hereinafter referred to as the “Dispute Resolution Officer”) a written request substantially in Form A set out in the Schedule to these Rules, setting out the matter in dispute and any other facts that such tariff customer or any other affected party considers to be relevant there to, including a proposal for the resolution of the same.*

*(4) Within ten (10) working days of the date of receipt of the request referred to in Rule 3, the Dispute Resolution Officer shall **arrange a meeting between the two disputant parties**, — Viz.*

*(i) the tariff customer or other affected party; and*

*(ii) the officer responsible for the matter in dispute, (hereinafter referred to as the Relevant Officer”),*

*and upon so meeting, both parties shall use their best efforts to resolve the dispute by reaching at a mutually acceptable settlement, with the help of the Dispute Resolution Officer.*

In the instant action, since the 4<sup>th</sup> Respondent was aware at the time which the decision mentioned in P20 was made that there is a dispute over the ownership and the occupation of the land between the Petitioner and the 5<sup>th</sup> Respondent to which the electricity supply is applied for, the 4<sup>th</sup> Respondent should have followed the above-mentioned provisions of the Act and Rules and refer the matter to the Commission. In *Jinadasa Vs Celon Electricity Board and Others*<sup>4</sup>, Sripavan, J. held that,

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<sup>4</sup> (2005) 2 SLR 13.

*“It is imperative that the procedure laid down in the Electricity Act should be properly observed. The provisions of the statute in this respect are supposed to provide safeguards to the petitioner. It is only by procedural fairness administrative powers are rendered tolerable. When an administrative act is challenged through judicial review, the court is concerned with the legality of the order made. Where proper procedures are not followed, the court will not hesitate to strike down the impugned order as being ultra vires.”*

The position of the learned DSG is that as mentioned in P20 the 4<sup>th</sup> Respondent has taken steps to provide electricity to the property temporarily after considering the undertaking given by the 5<sup>th</sup> Respondent on an affidavit that he will not object if the 1<sup>st</sup> Respondent takes steps to discontinue the electricity supply on an order of a court or any other authority and in such a situation the 5<sup>th</sup> Respondent will bear expenses for the same. Neither the learned DSG brought the attention of the Court to any legal provision where a temporary electricity connection could be given when there is a dispute between two parties for the ownership and/or occupation of the land which the electricity supply is applied for nor the Court could find any such provision in the Act.

After considering all the facts hereinbefore-stated, provisions of the Act and the judicial pronouncement of Sripavan, J., I hold that the decision of the 4<sup>th</sup> Respondent mentioned in P20 and the supply of electricity to the land in dispute without following the procedure laid down in the Act is illegal, unreasonable, arbitrary and *prima facie ultra vires* and therefore it is liable to be quashed by a Writ of *Certiorari*. The Court issues a

mandate in the nature of a Writ of *Certiorari* to quash the decision mentioned in P20 and a writ of *Mandamus* directing the 1<sup>st</sup> to 4<sup>th</sup> Respondents to disconnect the electricity connection and supply given to the land in dispute. Accordingly, the Court grants the reliefs sought in the prayers (b) and (e) to the Petition.

Under the circumstances mentioned above, it is the view of this Court that the 4<sup>th</sup> Respondent has given electricity to the land knowing well that the Act does not confer powers upon the 1<sup>st</sup> Respondent to provide temporary electricity connection and supply in situations where there are disputes between the parties for the ownership and/or occupation of the property for which the electricity supply is applied. This Court cannot approve such arbitrary illegal and deliberate acts and decisions of the decision-makers. Therefore, the 4<sup>th</sup> Respondent should personally pay a sum of Rs. 75,000/- to the Petitioner as costs of this action and should bear the cost which will be incurred by the 1<sup>st</sup> Respondent to discontinue the electricity supply given to the subject matter.

**JUDGE OF THE COURT OF APPEAL**