

**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 Prohibition under Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

CA (Writ) Application No: 220/2016

- 1) Port Junk Dealers Association,
No. 84/5, Bristol Complex,
Sir Razeek Fareed Mawatha, Colombo 1.
- 2) Weligama Palliya Gurunaselage
Udaya Senaka De Silva,
President,
Port Junk Dealers Association,
No. 90/2, Deva Kotikawatte,
New Town, Mulleriyawa.
- 3) Kudagama Liyanage Nalindrasiri,
Secretary,
Port Junk Dealers Association,
No. 48, Sumithrarama Mawatha, Colombo 13.

PETITIONERS

Vs.

- 1) Marine Environment Protection Authority.
- 2) Rear Admiral Rohana Perera,
Chairman,
Marine Environment Protection Authority,

1st and 2nd Respondents at No. 758,
Baseline Road, Colombo 9.

3) Sri Lanka Ports Authority,
No. 19, Chaithiya Road, Colombo 1.

4) Chulananda Perera.

4A) P.S.M.Charles,
Director General of Customs.

4th and 5th Respondents at Customs House,
No. 40, Main Street, Colombo 1.

5) Vice Admiral Ravindra Wijeguneratne.

5A) Vice Admiral Travis J.L.Sinniah,
Commander, Sri Lanka Navy
Naval Headquarters, Colombo 1.

6) Central Environmental Authority,
No. 104, Denzil Kobbekaduwa
Mawatha, Battaramulla.

RESPONDENTS

Before: Arjuna Obeyesekere, J

Counsel: Dulindra Weerasuriya, P.C., with Chamith Marapana
for the Petitioners

Ms. Nayomi Kahawita, Senior State Counsel for the
Respondents

Oral submissions: 17th September 2019

Decided on: 29th May 2020

Arjuna Obeyesekere, J

When this matter was taken up for argument on 17th September 2019, the learned President's Counsel for the Petitioners and the learned Senior State Counsel for the Respondents gave a brief outline of their respective cases and moved that this Court pronounce its judgment on the written submissions of the parties.

The Petitioners have filed this application, seeking *inter alia* the following relief:

- a) Hold that the decision of the 1st Respondent to charge fees from the members of the 1st Petitioner is *ultra vires* the provisions of the Act, and the Regulations promulgated under the Act;¹
- b) Hold that charging of fees is *ultra vires* and illegal and therefore by a Writ of Prohibition prevent the 1st Respondent charging the fees set out in paragraph III of the prayer.²

The learned Senior State Counsel, in the course of her submissions, raised a preliminary objection with regard to the maintainability of this application. She submitted that even though the Petitioners have claimed in the caption that this is an application filed in terms of Article 140 of the Constitution for Writs of Certiorari and Prohibition, the prayer does not contain any relief for a Writ of Certiorari. The learned Senior State Counsel therefore submitted that this

¹ Vide paragraph (II) of the prayer.

² Vide paragraph (III) of the prayer.

Court cannot grant a Writ of Certiorari as no such relief has been sought under (a) above.

The learned President's Counsel for the Petitioners, whilst conceding that there is a lacuna in the prayer, submitted that the petition makes it abundantly clear that the Petitioners are seeking a Writ of Certiorari, and that no prejudice has been caused to the Respondents.

The learned Senior State Counsel drew the attention of this Court to the judgment in Dayananda vs Thalwatte³ where a situation similar to what has occurred in this application had arisen, in that the petitioner had failed to identify the writ he had sought from this Court. In the prayer in that case, the petitioner had sought (a) to quash the decision of the 1st respondent to institute proceedings in terms of the State Lands Recovery of Possession Act and (b) to declare that the quit notice dated 08th April 1997 is of no force or avail. Upon an objection being taken that (a) the Petitioner has failed to identify the writ he has sought from this Court, and (b) that the prayer is misconceived and unknown to the law and therefore neither relief could be granted, and the petitioner's response being identical to what has been taken up in this application, this Court held as follows:

"It is necessary for the Petitioner to specify the writ he is seeking supported by specific averments why such relief is sought. Even though the Petitioner has set out in the caption that "In the matter of an application ... for writ of quo warranto and prohibition" there is no supporting averment specifying the writ and there is no prayer as regards the writ

³ (2001) 2 Sri LR 73.

that is being prayed for. The failure to specify the writ therefore renders the application bad in law.”

Although it is clear from the pleadings that the Petitioner is complaining about the *vires* of the actions of the Respondents, this Court is in agreement with the learned Senior State Counsel that this Court cannot grant a Writ of Certiorari, in the complete absence of a prayer to that effect. This situation must however be distinguished from a situation where there is a specific prayer for a Writ of Certiorari, and the power of Court to issue the said Writ of Certiorari, albeit in a modified form, in such situations. It is therefore the view of this Court that paragraph (II) of the prayer is misconceived in law, and that this Court cannot grant the said relief.

This Court shall now consider the application of the Petitioners for the aforementioned Writ of Prohibition, on its merits. This application was supported for notice on 25th July 2016. Having heard the learned Counsel for the parties, this Court refused to issue formal notice of this application for the reasons set out in its order. The Petitioners had thereafter sought Special Leave to Appeal against that decision.⁴ The Supreme Court, by its order dated 22nd May 2017 had directed this Court to issue notices and proceed to hear this matter on its merits.

The 1st Petitioner is the Port Junk Dealers Association, a company limited by guarantee and registered under the provisions of the Companies Act No. 7 of 2007. The 2nd and 3rd Petitioners are the President and Secretary, respectively, of the 1st Petitioner. The Petitioners state that its members are engaged in the

⁴ SC (Spl) Leave to Appeal Application No. 181/2016.

business of removing solid waste, waste oil, sludge etc from ships that call at different Ports in Sri Lanka. This business is commonly referred to as *providing waste reception facilities*.

The 1st Respondent is the Marine Environment Protection Authority, established under the Marine Pollution Prevention Act No. 35 of 2008 (the Act). In terms of its preamble, it is an Act to provide for the prevention, control and reduction of pollution in the territorial waters of Sri Lanka or any other maritime zone, its fore-shore and the coastal zone of Sri Lanka.

Sri Lanka, being an island nation situated close to major sea routes have vessels passing by on a regular basis and thus, it is important to take measures to manage, safeguard and preserve the territorial waters of Sri Lanka, and prevent the pollution of its territorial waters, fore-shore and maritime zone, by such ships.

In terms of Section 6(e) of the Act, it shall be a function of the 1st Respondent *to provide adequate and effective reception facilities for any oil, harmful substance or any other pollutant* that may be discharged by such vessels. Section 21 of the Act contains the following specific powers that the 1st Respondent shall exercise when dealing with waste discharged by ships:

“(a) to provide reception facilities within or outside any port in Sri Lanka, in consultation with the Marine Environmental Council to enable any ship using such port or traversing Sri Lanka waters or any other maritime zone, its fore-shore and the coastal zone of Sri Lanka to discharge or deposit any residue of oil or other pollutants;

- (b) to direct the person in charge of all ports, harbours, terminals, repair yards of ships, dry docks or any other marine related facility used by ships which have any residue of oil to discharge, to provide adequate reception facilities for the purpose of such discharge:"*

Although Section 21(b) requires the 1st Respondent to offer and carry out waste reception facilities for vessels, Section 21(b) provides further that, *"for the purposes of this paragraph the Authority may seek the assistance of any other person for the provision of such facilities or arrange for the provision of such facilities by any other person"*.

In terms of Section 51 (2), the Minister may make regulations in respect of *inter alia* the following matters:—

- "(a) Specifying the conditions relating to the issue of permits and licences by the Authority and the fees if any to be charged in respect thereof;*
- (g) Specifying the conditions subject to which reception facilities shall be provided, including the registration of persons providing such reception facilities and the fees to be levied for the provision of such facilities;"*

The 1st Respondent, acting in the exercise of its powers in terms of Section 21(b), had invited applications from third parties to provide the service of waste reception facilities, and as reflected in the letter dated 27th June 2016 annexed to the petition marked 'P9a' informed those third party service providers that the 1st Respondent would be charging a deposit from them for

the services that would be provided. By a further letter dated 1st July 2016, annexed to the petition marked '**P9b**', the 1st Respondent had informed that a sum of Rs. 500 would be levied on each cubic metre of oil that would be removed from a vessel. Being dissatisfied by '**P9a**' and '**P9b**', the Petitioners filed this application seeking the aforementioned relief.

The primary complaint of the Petitioners was that the 1st Respondent is seeking to levy fees without the Minister having made any regulations in terms of Section 51. It is however noted that in terms of Section 7(l) of the Act, the 1st Respondent has the power to charge fees for any services provided by the Authority from any person or body of persons.⁵ It is therefore the view of this Court that even in the absence of regulations, the 1st Respondent has the power to levy fees in terms of the power conferred on the 1st Respondent by Section 7(l). Therefore, it is the view of this Court that there is no merit in the submissions of the Petitioner.

Be that as it may, it is common ground that after this application was dismissed in 2016, but prior to the aforementioned order of the Supreme Court, the Minister has promulgated the Marine Environmental Protection (Waste Reception Facilities) Regulations 2016, in terms of Section 51 of the Act. The levying of fees is now done in terms of the said Regulations, published in Extraordinary Gazette No. 1996/27 dated 6th December 2016, and not in terms of the aforementioned documents marked '**P9a**' and '**P9b**'. It must be stated that the Petitioners have challenged the *vires* of the said Regulations in CA (Writ) Application No. 271/2017. In these circumstances, it is the view of this

⁵ Section 7(l) reads as follows: The Authority may exercise all or any of the following powers - to charge fees for any services provided by the Authority from any person or body of persons.

Court that events have overtaken this application, and that proceeding with this application is futile.

In the above circumstances, this Court dismisses this application, without costs.

Judge of the Court of Appeal