

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

M. David Raja,  
No.63/35, Jayasamarugama,  
Kandana.  
Petitioner

**CASE NO: CA/WRIT/5/2017**

Vs.

1. Dilip Wedaarachchi,  
State Minister,  
Ministry of Fisheries and Aquatic  
Resources Development,  
New Secretariat, Maligawatta,  
Colombo 10.
2. P. Harrison,  
Minister,  
Ministry of Fisheries and Aquatic  
Resources Development,  
New Secretariat, Maligawatta,  
Colombo 10.
3. K. D. S. Ruwanchandra,  
Secretary,  
Ministry of Fisheries and Aquatic  
Resources Development,  
New Secretariat, Maligawatta,  
Colombo 10.

4. Ginige Prasanna Janaka Kumara,  
Director General,  
Ministry of Fisheries and Aquatic  
Resources Development,  
New Secretariat, Maligawatta,  
Colombo 10.
5. E. A. S. K. Edirisinghe,  
Chairman,  
National Aquatic Resources  
Research & Development Agency,  
Crow Island,  
Colombo 15.
6. C. D. Wickremaratne,  
Acting Inspector General of Police,  
Police Headquarters,  
Colombo 01.
7. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

Respondents

Before: Mahinda Samayawardhena, J.  
Arjuna Obeyesekere, J.

Counsel: Udaya Bandara for the Petitioner.  
Dr. Charuka Ekanayake, S.C., for the  
Respondents.

Argued on: 30.06.2020

Decided on: 24.07.2020

Mahinda Samayawardhena, J.

The Petitioner had been issued annual permits from 2006 to 2012 to carry out fishing activities in *Madel Padu* No.6, Thathanthanai, Mullaitivu. He has not been issued annual permits since 2013. As seen from *inter alia* P6, P10, P11 and P12, the Petitioner has been complaining of this matter to various bodies including the subject Minister, the Human Rights Commission and the President. All the said authorities have instructed the Director General of Fisheries and Aquatic Resources to issue the said permit to the Petitioner. But the Director General, as seen from R4, has refused to issue the same, on the ground that the Petitioner leased out the said *Padu* in violation of Regulation 13(1) of the *Madel* (Beach Seine) Fishing Regulations 1984, published in the Gazette marked R2. The Petitioner has filed this writ application seeking to quash the said decision also contained in P7 by certiorari and to compel the Director General to uphold the recommendation of the Human Rights Commission contained in P10.

Let me now consider the circumstances under which the Director General issued R4 dated 01.10.2012.

By R1 and R3, it is seen that a complaint was made against the Petitioner having leased out his *Madel Padu* to a third party, namely, Lionel Livera and Livera's son. R3 reveals an inquiry had been held into this complaint by the Officer in Charge of the Mullaitivu police, at which Lionel Livera purportedly admitted he (Livera) and his son were carrying out fishing activities in the Petitioner's *Padu* as lessees. It is on this basis the Director

General by R4 instructed the Assistant Director of Mullaitivu not to issue an annual permit to the Petitioner for the said *Padu*.

It is relevant to note that the decision contained in R4 was not taken upon an inquiry conducted by the Director General, nor was it communicated to the Petitioner. Both the said acts are, in my view, against the rules of natural justice.

Having so acted, the Director General cannot now say the Petitioner in this writ application should have challenged the decision in R4 not in P7. In the first place, the Petitioner should have been informed of the decision in order to challenge R4. The Director General did not even issue a copy of R4 to the Petitioner.

The said conduct of the Director General has also effectively prevented the Petitioner from appealing against the decision in the manner set out in R2 (although the appeal process is not clear). This is also in violation of natural justice.

The Petitioner, as a law-abiding citizen, had complained to the Human Rights Commission about his grievance and the Human Rights Commission held an inquiry. At the said inquiry, as seen from the Human Rights Commission Report marked P10, *inter alia* the Police Information Books relating to this dispute had been called for and, upon perusing them, the Officer from the Mullaitivu police admitted that Livera did not state to the police he (Livera) was a lessee of the Petitioner's *Madel Padu*. *Vide*, in particular, the third paragraph of page 5 of P10.

The Report of the Human Rights Commission also makes reference to a separate incident in 2012, where the Petitioner had complained to the police of third parties obstructing him from carrying out his work in his *Padu*. At an inquiry conducted into the said complaint, the police obtained a statement from Livera's son as evidence in support of the Petitioner's complaint. The said statement dated 08.10.2012 has been produced marked P8. In this statement, Livera's son does not suggest the Petitioner has leased out the said *Padu* to him and/or his father. What he says therein is the Petitioner, who is his uncle, is the owner of the said *Padu* and he (Livera's son) along with several others work in it (for and on behalf of the Petitioner); he goes on to say two third parties are obstructing them from carrying out their activities. *Vide* also the last paragraph of page 3 of P10.

The Human Rights Commission, having rightly highlighted the above and the fact that no proper inquiry was held prior to the decision not to issue the permit to the Petitioner, strongly recommends that the Director General reissue the permit to the Petitioner.

However, the Director General by R5 has reiterated his original position that the Petitioner had leased out the *Padu*, thereby violating the Regulations marked R2. In R5 also, the Director General refers to the police inquiry findings, which were proved inaccurate before the Human Rights Commission.

In my view, once the Director General received the recommendation of the Human Rights Commission, if he had any doubts, he could have held a fresh inquiry and reconsidered

his decision. He did not do so. Instead, he relied on the same initial police observations, which were found to be unreliable, to affirm his previous decision.

It shall also be noted that even the Secretary to the President has informed the Director General by P12 to implement the recommendation of the Human Rights Commission, but the Director General has not done so.

In the written submissions, the Respondents state that although the Respondents are not under a legal obligation to give effect to the recommendation of the Human Rights Commission, they took steps, in good faith, to ascertain the possibility of reissuing the permit to the Petitioner and thereafter recommended an alternative *Padu* to the Petitioner, but the Petitioner was uncooperative.

In my view, there is no reason for the Director General to give an alternative *Padu* to the Petitioner. An alternative *Padu* could have been given to the new person, if any, and the matter could have been resolved.

In *Sri Lanka Telecom Ltd. v. Human Rights Commission of Sri Lanka* (SC/APN/No.215/12, SC Minutes of 01.03.2017), the Supreme Court held recommendations of the Human Rights Commission attract writ jurisdiction. In the course of the Judgment, Justice De Abrew declared: “*If a recommendation of a Public Body affects the right of an individual, Superior Courts, in the exercise of their writ jurisdiction, have the power to quash such a recommendation by issuing a writ of certiorari.*” *A fortiori*, if a recommendation of a public body protects the rights of an

individual, the superior Courts, in the exercise of writ jurisdiction, have the power to compel the enforcement of such a recommendation by issuing a writ of mandamus, if the Court is satisfied the recommendation is made on compelling grounds.

In the facts and circumstances of this case, I take the view that the refusal to issue the permit in respect of the disputed *Padu* to the Petitioner without having held a proper inquiry is illegal, and the refusal to carry out the recommendation of the Human Rights Commission without a valid reason is unjustifiable.

I grant the Petitioner the reliefs as prayed for in paragraphs (c), (d) and (e) of the prayer to the petition.

However, if the disputed *Padu* has now been given to a third party, the permit shall be issued to the Petitioner to be operative from 01.01.2021.

The application is allowed with costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal