

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

CA (Writ) Application
No.157/2021

In the matter of an Application for Orders in the nature of Writs of *Certiorari* and *Mandamus* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Samagi Real Estates (Private) Limited,
No. 01/56, Chillaw Road,
Wennappuwa.

Petitioner

1. Ceylon Electricity Board,
2. Eng. Vijitha Herath,
Chairman,
- 2A. M.M.C. Ferdinando,
Chairman,
- 2B. N.S. Ilangakoon,
Chairman,
3. N.S. Ilangakoon,
Vice Chairman,
- 3A. Abey Ranaweera,
Vice Chairman,
4. Eng. N.W.K. Herath,
General Manager,
- 4A. Eng. M.R. Ranatunga,
General Manager,
- 4B. Eng.(Dr.) D.C.R. Abeysekera,
General Manager (Acting);

The 1st to 4th Respondents all of:
No.50, Sir Chittampalam A Gardiner
Mawatha, P.O. Box 540, Colombo 02.

5. Eng. R. M. Amadoru,
Electric Engineer (Commercial)
North Western,

6. Eng. R. S. Robise,
Deputy General Manager,

The 5th to 6th Respondents- all of:
Ceylon Electricity Board - North Western
Office, Narammala Road, Assadduma,
Kuliyapitiya.

7. Eng. R. S. Gajenthira,
Information Officer - Distribution Division
01, Deputy General Manager
(Commercial and Corporate),
Ceylon Electricity Board,

8. Eng. (Dr) D. C. R. Abeysekera,
Additional General Manager
(Corporate Strategy),

The 7th to 8th Respondents-all of.
No.50, Sir Chittampalam A Gardiner
Mawatha, P.O. Box 540, Colombo 02.

Respondents

9. Randika Sevakar (Private) Limited,
No. 4, Hirusevana, Jethawanawatta,
Essella, Veyangoda

Added Respondent

Before: **M. T. MOHAMMED LAFFAR, J.**
S. U. B. KARALLIYADDE, J.

Counsel: Shantha Jayawardena with Thilini Vidanagamage, Hirannya
Damunupola and Azra Basheer for the Petitioner.

A. Gajadeera S. C. for the Respondents.

Dushantha Kularathne instructed by Anurangi Singh for the
Intervenient-Petitioner.

Argued on: Disposed by way of written submission

Written Submissions on : 06.09.2023 (by Petitioner)
06.09.2023 (by Intervenant-Petitioner)

Decided on: 28.02.2024

MOHAMMED LAFFAR, J.

The Petitioner in this Application is seeking Orders, *inter alia*, in the nature of Writ of *Mandamus* compelling the Respondents to give or issue a breakdown or the basis for the computation of the estimates in the letter dated 20.02.2020 marked 'P7'; a Writ of *Certiorari* quashing the estimate in the said letter; and/or a Writ of *Mandamus* compelling the Respondents to reissue the estimate in compliance with 'Standard Construction Cost' stipulated by the 1st Respondent (Ceylon Electricity Board) and the 'Statement on the Rights and Obligations of the Electricity Consumers' marked 'P8' published by the Public Utilities Commission of Sri Lanka (PUCSL).

The Petitioner is a company involved in the business of developing of housing property including blocking out and sale of property and has been registered for the said purpose within the administrative limits of the North Western Province as per its Certificate of Annual Registration by-law on the development of housing property and sale of blocked out lands within the area of authority of Pradeshiya Sabha' (marked 'P2', 'P3', and 'P3a'). In this background, the Petitioner had acquired the divided parts of the land "Keethale Watta (Diyaheda Watta)" by way of Deeds of Transfer (marked 'P4(a)' to 'P4(d)') for the purpose of blocking out and selling the same. Upon a duly submitted Application to the Pradeshiya Sabha of Naththandiya, the approval had been granted to the Petitioner for sub dividing the land (Blocking out Plans) on 31.08.2017 (marked 'P5(a)' to 'P5(c)'). Thereafter, in terms of the said by-law (marked 'P3'), as required under Clause 09.5 of P3(a), the Petitioner had taken steps to arrange for the supply of three phase electricity to all roadways of the blocks described herein.

Following the dealing regarding the application for electricity in 2016, on 13.05.2019 the Petitioner has paid the due fees and applied (marked 'P6') to obtain electricity from CEB, the 1st Respondent CEB. Following this, on 20.02.2020 the 5th Respondent issued an estimate to supply electricity for the subject property at a total cost of Rs. 5,460,983.00, and that the estimate has been prepared based on the Standard Construction Cost relating to 2019 (marked 'P7'). However, there had been no breakdown for the said estimated cost that the Petitioner had to incur for obtaining a new connection for electricity.

In this context, the Petitioner has then obtained another estimate (marked 'P9') by another service provider in the field identified through their electrician, Randika Sevakaru (Private) Limited, the Added 9th Respondent. It is submitted that through such assessment it has been identified that the aforesaid estimate marked 'P7' is excessive and/or contrary to the 'Standard Construction Cost - 2019' (marked 'P10'). The statement (marked 'P26') as prepared by the said 9th Respondent in relation to the Estimate 'P7' based on the Standard Construction Cost (marked 'P10'), Allowed Charges for 2019 marked 'P21(c)' and the Catalogue & Price List of Materials 2019 (marked 'P22') stipulates that the actual cost incurred is approximately Rs 3,798,310.00, as opposed to the sum of Rs. 5,460,983.00 estimated by the CEB.

The Petitioner, thereafter, through various communication including a letter of demand and a right to information (RTI) request, had requested the 1st Respondent (Letters marked 'P11', 'P12', 'P13', 'P14') to reconsider the estimate given and provide a breakdown or the basis for the computation of the estimate for which the Petitioner had been informed that the documents used for the calculation are the 'Standard Construction Cost - 2019' and the 'Goods and Price List - 2019'. The RTI response had then been appealed to the Respondents as well (marked 'P17', 'P18', 'P18(a)'). However, it is evident that all information furnished by the Respondents had neither disclosed the

elaborate basis of the calculation nor given the Petitioner the breakdown of the cost associated with the supply of electricity requested

It is also submitted by the Petitioner that similar situations relating to assessments have been experienced by other consumers/applicants of new connections which have subsequently revised been revised (marked 'P15'). The Petitioner also submits that there is a document identified as 'Investigation Report' which had been issued for selected developers and projects by Respondents for the purpose of computation of estimates which provides a detailed breakdown/basis for the estimates.

It is noted that in the aforesaid setting after the institution of this action, the Petitioner had on 17.02.2021 paid the CEB the said estimated sum, and work relating to the supply of electricity has commenced on 17.03.2021.

The Respondents are of the view that the Petitioner is not a direct customer and that there is no corresponding duty owed by the Respondents towards the Petitioner to provide a breakdown.

This Court is entreated by the Petitioner to explore the conduct of the 1st Respondent CEB, on the issue of whether relevant information had been provided as established by law and whether the estimate/cost thereto is legitimate and in line with the established law and regulations.

In this regard, attention of Court is drawn to the Statement by the Public Utilities Commission of Sri Lanka (PUCSL) made under Section 3(1)(e) of the Sri Lanka Electricity Act No. 20 of 2009 titled "the Rights and Obligations of the Electricity Consumers" (marked 'P8'). Clause A. 8. of Part II states as follows:

*“Consumers have a right to know **the breakdown (including the basis of calculation)**, of the payments and any security deposit that are required to be paid to the service provider to obtain a new electricity supply”*

As the Petitioner had duly applied and paid for supply for electricity, the Petitioner is deemed a consumer and therefore had a legitimate expectation to receive the breakdown including the basis for calculation of the payments and any security deposit that are required to be paid as provided above. It is *prima facie* evident that the Respondents were duty bound to supply the required information. As the assessment produced analysing the actual costs based on the relevant documentation, resulting with a variation/difference of Rs. 1,662,675.00 to the estimate provided by the CEB as the Respondent, the accuracy of such estimate produced by the Respondents is questionable and clearly unreliable. It is also noted that the Respondents have been inconsistent and selective with whom they share the related information.

This Court is of the view that the Respondents' position that the Petitioner is not a direct customer and that there is no corresponding duty owed by the Respondents towards the Petitioner to provide a breakdown of estimate holds no merit whatsoever.

In ***Wickremasinghe and Another v. The Urban Development Authority***¹
C. N. JAYASINGHE, J. observed as follows:

"Legitimate expectation is pivoted on fairness and reasonableness; as long as these two components coexist there can and always will be legitimate expectation."

"A public authority has a duty to act with fairness and consistency in dealing with the public and if it makes inconsistent decisions unfairly and unjustly, it misuses its powers."

In the obiter dictum of the case ***Ginigathgala Mohandiramlage Nimal Siri***

¹ (2002 (3) SLR 253),

Vs. Colonel P.P.J. Fernando and others² Justice Priyantha Jayawardena views legitimate expectation as follows;

"The doctrine of legitimate expectation applies to situations to protect legitimate expectation I arises from establishing an expectation believing an undertaking or promise given by a public official or establishing an expectation taking into consideration of established practices of an authority. However, the said criteria should not be considered as an exhaustive list as the doctrine of legitimate expectation has a potential to develop further. Legitimate expectation can be either based on procedural propriety or on substantive protection. Procedural expectations are protected by requiring that the promised procedure be followed save in very exceptional circumstances, for instance: where national security warrants a departure from the expected procedure. However, in such instances the decision-maker must take into account all relevant considerations."

Therefore, it is established that the Petitioner has a right for the breakdown of the estimate costs and The Respondents being under a statutory duty to issue the breakdown to its consumers have acted inconsistently and arbitrarily for denying the Petitioner of its legitimate expectations. The Respondents have failed to adduce reasons for such conduct.

In the aforesaid circumstances this Court is obliged to grant a Writ of Mandamus compelling the Respondents to give/issue a breakdown or the basis for the computation of the estimates; a Writ of Mandamus compelling the Respondents to give a breakdown or the basis for the computation of the estimate in the letter marked 'P7'; A Writ of Certiorari quashing the estimate in letter dated 20.02.2020 marked 'P7' and a Writ of Mandamus compelling the Respondents to reissue the estimate in compliance with 'Standard Construction Cost' and the 'Statement on the Rights and Obligations of the

² SC/FR/256/2010

Electricity Consumers'. Application allowed with costs at Rs. 25,000/- payable by the Respondents to the Petitioner.

Application allowed with Costs.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL