

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

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

**CA (Writ) Application No:  
349/2020**

1. Center for Environment Justice, (Guarantee Limited)  
No.20/A, Kuruppu Road,  
Colombo 08.
2. Withanage Don Hemantha Ranjith Sisira Kumara,  
Executive Director,  
Center for Environmental Justice, No.20/A,  
Kuruppu Road,  
Colombo 08

**PETITIONERS**

**-VS-**

1. Marine Environment Protection Authority,  
177, Nawala Road,  
Colombo 05.
2. Central Environmental Authority, No.104,  
Denzil Kobbekaduwa Mawatha.  
Battaramulla.

3. Board of Investment of Sri Lanka,  
Level 24, West Tower,  
World Trade Centre, Echelone square,  
Colombo 01.
4. Inspector General of Police,  
Police Headquarters,  
Colombo 01.
5. Officer-in-Charge,  
Grandpass Police Station,  
St.Joseph's St,  
Colombo.
6. Municipal Commissioner,  
Colombo Municipal Council,  
Dr.C.W.W.Kannangara Mawatha,  
Colombo 07.
7. Kaburupola Engineering and Constructions,  
No.696/1, Thalduwa,  
Awissawella.
8. Hon. Attorney General,  
Attorney General Department,  
Colombo 12.

### **RESPONDENTS**

Teejay Lanka PLC,  
Block D8-D14,  
Seethawaka Export Processing Zone,  
Industrial Park,  
Awissawella.

### **INTERVENIENT-RESPONDENT**

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

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

**Counsel:**

Dr. R. Dabare with S. Ponnampereuma instructed by Ms. Samadhi Hansani for the Petitioners.

V. de Abrew, ASG PC with Ms. N. Kahawila, SC for 1<sup>st</sup> to 5<sup>th</sup> and 8<sup>th</sup> Respondents.

T. K. D. de Silva for the 6<sup>th</sup> Respondent.

N. Abeyratne, PC with L. Asanthi instructed by Asanka Dayarathne for the 7<sup>th</sup> Respondent.

Kalinga Indatissa, PC with Mahesh Senaviratne instructed by FJ&G de Saram for the Intervenant-Respondent.

**Argued:** By way of Written Submissions.

**Written submissions tendered on:**

14.09.2023 by the Petitioners.

08.09.2023 by the 6<sup>th</sup> Respondent.

31.10.2023 by the 7<sup>th</sup> Respondent.

12.09.2023 by the Intervenant-Respondent.

**Decided on:** 04.04.2024.

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

The 1<sup>st</sup> Petitioner, the Centre for Environmental Justice, is a Company limited by guarantee and duly incorporated under the Companies Act, No. 07 of 2007 and has instituted this Writ Application in the public interest to ensure compliance with environmental protection laws, regulations and procedures and to ensure the performance of the Respondents' entrusted duties and obligations. On or about

11.07.2020, the 1<sup>st</sup> Respondent, the Marine Environment Protection Authority (the MEPA) received information that 19 bowzers filled with wastewater sludge originated from the Intervenant-Respondent, Teejay Lanka PLC situated at Seethawaka Industrial Zone were scheduled to be transported to Madampitiya to be pumped to the sea using Madampitiya Sewerage Pumping Station. The Teejay Lanka PLC contracted the services of Kaburupola Engineering and Constructions, the 7<sup>th</sup> Respondent for the removal, transportation and discharge of the sludge to the Madampitiya Pumping Station. Ten out of nineteen bowzers were dispatched and five of them (vehicles bearing Nos. LK-2654, LL-1992, LM-6318, LL-8225 AND LO-5730) were apprehended by the MEPA, Special Task Force and the Environmental Police Unit of the Grandpass Police Station. By the time the other bowzers had already pumped the wastewater sludge to the sea through the Madampitiya Pumping Station and left the premises. The five bowzers that were apprehended and the drivers were handed over after a complaint was lodged at the Grandpass Police Station in terms of the Marine Pollution Prevention Act, No. 35 of 2008. A permit dated 19.12.2019 marked as P7 has been issued to the 7<sup>th</sup> Respondent by the Colombo Municipal Council to dispose of the sewage at the Madampitiya Pumping Station prior to the alleged incident. However, in terms of that permit, only sewerage from toilet pits and other similar sources is permitted to be discharged, but oil, grease, acid or any other effluent other than sewage is not permitted to discharge into the system. The Petitioners allege that the 7<sup>th</sup> Respondent had transported toxic wastewater sludge and discharged them at the Madampitiya Pumping Station and a Report dated 28.07.2020 marked as P9 had been obtained from the Chemical and Microbiological Laboratory of the Industrial Technology Institute, which reveals that the samples collected by the MEPA contains hazardous effluents including Arsenic. The Grandpass Police filed a case (bearing No.36335/04/2020) against the

drivers of the bowzers at the Colombo Magistrate's Court and they were released on bail. However, that case was subsequently withdrawn on the instructions of the Hon. Attorney General (P8). Then the 2<sup>nd</sup> Petitioner along with other parties concerned filed a Public Nuisance case at the Colombo Magistrate's Court, consequent to which the learned Magistrate issued a conditional order relating to the disposal of the sludge contained in the detained bowzers. The Petitioners allege that the bowzers detained by the Police were in the Grandpass Police custody even up to the date of institution of this Application.

This Application has been filed by the Petitioners alleging that,

- 1) The MEPA and the CEA have failed to bring any charges before the court against the owners and transporters of the hazardous sludge for discharging such toxic wastewater sludge to the sea in violation of the provisions of the Marine Pollution Prevention Act, No. 35 of 2008 and the National Environment Act, No. 47 of 1980.
- 2) The Hon. Attorney General has failed in his duty to indict the real perpetrators as per Section 50 of the Marine Pollution Prevention Act.
- 3) The Inspector General of Police (the 4<sup>th</sup> Respondent) and the Officer-in-Charge of the Grandpass Police Station (the 5<sup>th</sup> Respondent) have failed to conduct a proper investigation into the said matter and apprehend the perpetrators involved and to record statements of witnesses and conduct a thorough investigation with regard to the five bowzers that had already dumped the sewerage into the sea.
- 4) The 3<sup>rd</sup> Respondent, the Board of Investment of Sri Lanka (BOI) has acted arbitrarily and *ultra vires* violating Section 20 and Section 20A of the Greater Colombo Economic Commission Law, No. 04 of 1978 (as amended) in granting a license/approval to Teejay Lanka PLC for the removal, transportation and

discharge of wastewater sludge at the Madampitiya Pumping Station (P10) without consulting and obtaining the concurrence of the CEA.

- 5) The 6<sup>th</sup> Respondent, the Municipal Commissioner of the Colombo Municipal Council had failed to monitor the activities of the 7<sup>th</sup> Respondent and failed to investigate and take necessary actions against the 7<sup>th</sup> Respondent for violation of the conditions set out in the permit marked as P7 and failed to act in terms of Sections 96 and 181 of the Municipal Council's Ordinance, No. 29 of 1947 (as amended) to take actions against the officers who were acted in collusion with the perpetrators in dumping unauthorised waste into the sea.
- 6) The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> Respondents have failed to perform their statutory duty and responsibility for regulating, maintaining and controlling sources of pollution of the environment and for protecting and improving the quality of the environment in terms of the aforementioned Acts and the National Environmental (Protection and Quality) Regulations No. 01 of 2008.

The Petitioners argue that the Respondents have a statutory duty to perform the duties and obligations vested upon them under the above-mentioned Acts and the Regulation and the powers have been conferred on them in the public trust. The Petitioners further argue that the aforementioned failures, omissions and inaction on the part of one or more or all of the Respondents are arbitrary, unreasonable and in breach of the public trust reposed on them. The Petitioners seek the following substantive reliefs, *inter alia*,

- b) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 8<sup>th</sup> Respondent to indict the perpetrators under the Marine Pollution Prevention Act No. 35 of 2008;
- c) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 4<sup>th</sup> and the 5<sup>th</sup> Respondent to conduct an independent

investigation into the said matter without any unreasonable delay and apprehend all parties involved;

- d) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to investigate the said disposal of toxic wastewater sludge to the sea and other places in violation of the provisions of the Marine Pollution Prevention Act No. 35 of 2008 and National Environment Act and regulations made thereunder and take necessary actions against all parties involved,
- e) Grant an order in the nature of a Writ of Certiorari quashing the approval issued by the 3<sup>rd</sup> Respondent without consultation with and after having obtained the concurrence of the Central Environmental Authority to the Teejay Lanka PLC or the transportation and disposal of waste marked "P10".
- f) Grant and issue an order in the nature of a Writ of Mandamus directing and/ or compelling the 1<sup>st</sup> 2<sup>nd</sup> and 6<sup>th</sup> Respondent to monitor the sewage disposal facilities which discharge effluents to the sea, to establish checkpoints managed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents together with the Environmental Police Units and/or Armed Forces at such facilities;
- g) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 2<sup>nd</sup> Respondent to coordinate all waste disposal activities by industries in terms of Section 10 of the National Environmental Act, in order to minimize the illegal dumping of harmful waste and effluents to the environment

I will first address the allegations of the Petitioners with regard to the inaction of the MEPA and the CEA. The contention of the learned Counsel appearing for the Petitioners is that the MEPA and the CEA failed to take legal action against the owners and transporters of the hazardous sludge for discharging to the sea in violation of the

Marine Pollution Prevention Act and the National Environment Act. The learned Counsel appearing for the Petitioners brought to the notice of the Court the fact that in terms of Section 27 of the Marine Pollution Prevention Act, other than under a permit obtained by the MEPA, any person who dumps oil, harmful substances or other pollutant into the territorial waters of Sri Lanka or any other maritime zone, its fore-shore and the coastal zone of Sri Lanka shall be guilty of an offence under the Act. The position of the MEPA in that regard is that there is no blatant violation of law and/or any omission on the part of the officials of the MEPA in the discharge of their statutory functions under the provisions of the Marine Pollution Prevention Act and they had taken all possible steps regarding the alleged incident including lodging police complaints, sending contaminated water samples to the Government Analyst, conducting investigations, etc. The MEPA has taken up the position that the power and authority to handle and issue licenses for the transportation and disposal of waste is vested with the CEA under the National Environment Act. The CEA denies the allegation of the Petitioners that they had failed to take necessary action in this regard and pleaded that the action had been taken against the Company owner for violation of environmental laws and on 11.07.2020 site inspection was carried out to investigate the complaint received by the 2<sup>nd</sup> Respondent regarding the illegal discharge of sludge (2R2). After the case filed by the Gradpass Police in the Magistrate's Court was withdrawn, the CEA as the Environmental Regulator has taken steps under the National Environmental Act and filed 5 separate cases against the drivers of the bowzers (2R3a to 2R3e). All the cases had to be taken for inquiry on 19.10.2022. Moreover, the CEA filed a case against the Teejay Lanka PLC in the Magistrate's Court Avissawella (marked as 2R17) and the Teejay Lanka PLC raised preliminary objections in that case and an order was made on 30.04.2021 upholding that preliminary objection. Being



aggrieved by the said order the CEA made a Revision application to the High Court of Aissawella on 11.11.2021 marked as 2R18. Confirming these facts the learned President's Counsel appearing for the Teejay Lanka PLC informed this Court that, by a private plaint dated 23.07.2020, an NGO including the 2<sup>nd</sup> Petitioner had filed a case in the Magistrate's Court of Colombo (case No. 37475/2020) naming the Teejay Lanka PLC as the 1<sup>st</sup> Accused and that case was subsequently dismissed.

With regard to the allegation of the Petitioners that the detained five bowzers remain at the Grandpass Police station, the learned ASG appearing for the 1<sup>st</sup> to 5<sup>th</sup> Respondents informed the Court that, the five bowzers that were detained were transported to INSEE Eco Cycle Lanka (Pvt) Ltd at Katunayake Export Processing Zone on 03.09.2020 under the supervision of the Magistrate's Court and with the participation of the officers of CEA, BOI and Police for destroying the sludge contained in the bowzers in an environmentally friendly manner. The learned President's Counsel appearing for the 7<sup>th</sup> Respondent in support of the submission of the learned ASG stated that the CEA and MEPA had carried out intense investigations into the alleged incident and found that no sludge or any toxic substance was discharged into the sea through the Madampitiya Pumping Station and thereby not committed any offence under the Marine Pollution Prevention Act and steps were taken to dispose the sludge contained in the detained bowzers under the direct order and supervision of relevant officers and the learned Magistrate of Colombo who personally supervised such disposal according to the directions of the CEA. The learned President's Counsel drew the attention of the Court to the fact that the 7<sup>th</sup> Respondent and the drivers of the five gully bowzers had pleaded guilty at the Magistrate's Court and accordingly, fines and suspended sentences were imposed upon them by the learned Magistrate (journal entry dated 12.12.2022 in case No. 38236/04/20 marked as X).

In prayer (d) the Petitioners are seeking a Writ of Mandamus directing MEPA and CEA to investigate the alleged incident of disposal of toxic wastewater sludge to the sea and other places in violation of the provisions of the Marine Pollution Prevention Act and National Environment Act and regulations thereto and take necessary legal action against all the parties involved. When considering the above-stated facts, this Court can be satisfied that the MEPA and the CEA had taken necessary steps to bring forthwith the perpetrators of the alleged incident before the court of law and deal with them according to the provisions of the Marine Pollution Prevention Act and the National Environment Act. Under such circumstances, this Court sees no merit in the argument of the learned Counsel appearing for the Petitioners that MEPA and CEA had failed to take steps in respect of the alleged incident and therefore, this Court refuse to grant the relief prayed for in prayer (d) to the Petition of this Application. Furthermore, according to the extracts marked as 5R1 to 5R7 produced by the 1<sup>st</sup> to 5<sup>th</sup> Respondents regarding the statements recorded of the witnesses and the suspects and the investigations carried out by the Police, this Court cannot agree with the contention of the learned Counsel appearing for the Petitioners that the 4<sup>th</sup> and 5<sup>th</sup> Respondents had failed to perform their duty. In prayer (b) to the Petition, the Petitioners are seeking a Writ of Mandamus directing the 8<sup>th</sup> Respondent to indict the perpetrators before the High Court under the Marine Pollution Prevention Act and in prayer (c), a Writ of Mandamus directing the 4<sup>th</sup> and the 5<sup>th</sup> Respondent to conduct an independent investigation into the said matter and apprehend all parties involved. Upon considering all the above-stated facts and circumstances, I am of the view that a necessity does not arise to grant reliefs prayed for in prayers (b) and (c) in the Petition to this Application and therefore refuse to grant those reliefs.

In respect of the allegations made against the Municipal Commissioner of Colombo (the 6<sup>th</sup> Respondent) the learned Counsel appearing for the 6<sup>th</sup> Respondent submitted that as per the letter dated 12.06.2020 issued by the CEA marked as C1 Kaburapola Engineering and Construction (the 7<sup>th</sup> Respondent) had been authorized by the CEA to transport treated wastewater for the years 2020-2021 by three vehicles bearing No's. LM-8870, LO-3562 and LO-5730 and the registration of those vehicles for transportation was valid till 31.12.2021. Accordingly, the Colombo Municipality has issued the permit marked as P7 granting permission till 30.06.2020 to the above-mentioned three vehicles to transport sewage from toilet pits and other similar sources to the Madampitiya Pumping Station. After the validity period of C1 expired, the Municipality issued another permit valid up to 31.12.2020 marked as C2 to the 7<sup>th</sup> Respondent in respect of the above-mentioned three vehicles to discharge wastewater at the Madampitiya Pumping Station. When the Municipality came to know about the alleged incident, it immediately took steps to suspend the permits issued by it to the 7<sup>th</sup> Respondent. Upon several appeals made by the Gully Bowser Owner's Welfare Association (marked as C4(a) and C4(b)), the Municipality lifted the suspension and granted temporary approval to the vehicles including the vehicle bearing No. LO-5730 by the letter dated 16.10.2020 marked as C5 on the condition that the drivers of the said vehicles would not be allowed to visit the unloading site. The Counsel appearing for the Municipal Commissioner, the 6<sup>th</sup> Respondent argued that the Municipality has discharged its functions according to law particularly by imposing strict conditions, conducting relevant tests prior to issuance of permits and suspending the permit upon breach of the conditions in the permit. The Petitioners have also admitted in the Petition to this Application the fact that the 6<sup>th</sup> Respondent imposed strict conditions prior to the issuance of the permit. The learned Counsel appearing for the Petitioners further argued

that the 6<sup>th</sup> Respondent has acted in violation of Section 181 of the Municipal Council's Ordinance by failing to take action against the officers who allegedly acted in collusion with the perpetrators. Section 181 reads thus,

*“Any officer or servant of a Municipal Council (other than a member of the Local Government service), may be suspended or dismissed, or fined or reduced in status, or any increment to his salary may be withheld for any specified period for any breach of departmental rules or discipline or for carelessness, incompetence, neglect of duty or other misconduct”*

This Court cannot agree with the argument of the learned Counsel appearing for the Petitioners that the 6<sup>th</sup> Respondent has acted in violation of Section 181, as the 6<sup>th</sup> Respondent and the officers of the Colombo Municipal Council have taken all possible steps including taking steps to impose strict conditions at the time issuance of the permits marked as P7 and C2 and have taken immediate steps to suspend the permit granted to the 7<sup>th</sup> Respondent upon becoming aware of the alleged incident.

Now I will address the argument of the learned Counsel appearing for the Petitioners that BOI has acted arbitrarily and violated Sections 20 and 20A of the Greater Colombo Economic Commission Law by granting licence/approval to Teejay Lanka PLC (marked as P10) without the concurrence of the CEA. The learned ASG appearing for the 1<sup>st</sup> to 5<sup>th</sup> Respondents submitted that BOI has the authority to make decisions relating to the operation of Enterprises within the Zone under the Greater Colombo Economic Commission Law and the National laws of the country. The approval has been given by the BOI to Teejay Lanka PLC since 2009 to dispose of liquid waste at the treatment facility at Madampitiya by the letter dated 06.04.2009 marked as 3R2. The Environmental Protection Licence (the EPL) of Teejay Lanka PLC expired on

24.04.2020. Since the industry was registered under the BOI, BOI had made the request dated 23.01.2020 marked as 2R7 from the CEA to arrange an inspection to renew the EPL and the officers of CEA carried out an inspection on 03.03.2020 (2R8) in that regard. On 11.07.2020, the CEA received a complaint from the MEPA regarding the discharging of sludge generated from industrial wastewater to sea through the Madampitiya Pumping Station. The approval was obtained from the BOI to discharge sludge to Madampitiya Pumping Station by the letter dated 10.07.2020 marked as 2R9/P10. CEA then informed the Teejay Lanka PLC by letter dated 16.07.2020 marked as 2R11 about the inability to grant concurrence to BOI for the renewal of EPL and to stop industrial operations until further notice. Meanwhile CEA by letter dated 22.07.2020 marked as 2R12 informed BOI that it has no objection for operating the industrial activities of Teejay Lanka PLC subject to the conditions stipulated in the EPL. It is evident from the letter marked as P10/2R9 and the above-stated facts that the BOI has indeed granted approval to the Teejay Lanka PLC to discharge sludge to Madampitiya Pumping Station without the concurrence of the CEA as the EPL had expired and was in the process renewing. However, it should also be noted that an EPL including special conditions has been issued with the concurrence of the CEA as evident from the letters dated 23.03.2021 marked as 3R3 and 2R15 after carrying out a joint inspection by the CEA and BOI on 17.02.2021 (2R16). By prayer (e) to the Petition, the Petitioners seek a Writ of Certiorari to quash P10, where BOI has given approval to Teejay Lanka PLC for the transportation and disposal of waste without the concurrence of the CEA. However, the learned Counsel appearing for the Petitioners has informed this Court on 05.03.2021, that he is not pursuing the relief prayed for in prayer (e). This Court is not inclined to grant the relief prayed for in prayer (e) even if the Petitioners

are pursuing the said relief as a new EPL has been issued by the BOI in concurrence with the CEA, which in fact will result in P10 being futile.

When considering all the above-stated facts this Court cannot agree with the contention of the learned Counsel appearing for the Petitioners that the Respondents have failed to perform their statutory duties and responsibilities in regulating, maintaining and controlling sources of pollution of the environment under the Marine Pollution Prevention Act, National Environment Act and the National Environmental (Protection and Quality) Regulations.

Considering all the above-stated facts and circumstances this Court is of the view that the Petitioners are not entitled to the reliefs sought in prayer (b) to (g) to the Petition. Therefore, this Court dismisses this Writ Application. No costs ordered.

*Application dismissed.*

**JUDGE OF THE COURT OF APPEAL**

**M.T. MOHAMMED LAFFAR, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**