

**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 a writ of mandamus
under and in terms of the provisions of
Article 140 of the Constitution*

C. A. Ap. No. 565 / 2007

Centre for Environmental Justice
(Guarantee) Limited,
20 A, Kuruppu Road,
Colombo 08.

PETITIONER

v.

1. Central Environmental Authority,
104, 'Parisara Piyasa',
Robert Gunewardene Mawatha,
Battaramulla.
2. Minister of Environment and Natural
Resources,
Ministry of Environment and Natural
Resources,
'Sampathapaya', Rajamalwatta Road,
Battaramulla.
3. Minister of Provincial Councils and
Local Government,
Ministry of Provincial Councils and
Local Government,
330, Union Place,
Colombo 02.
4. Attorney General,
Attorney General's Department,
Hulftsdorp Street,
Colombo 12.

RESPONDENTS

**TO HIS LORDSHIP THE PRESIDENT AND THE OTHER HONOURABLE JUSTICES
OF THE COURT OF APPEAL**

On this 22 day of June 2007

The Petition of the Petitioner above named appearing by Ms. Nilmal Wickramasinghe its Attorney at Law states as follows:

01. The Petitioner is a public company, limited by guarantee and a body corporate duly incorporated under and in terms of the provisions of the **Companies Act No. 17 of 1982**, as amended and may sue or be sued in its corporate name. True copies of the Memorandum and Articles of Association and Certificate of Incorporation of the Petitioner are annexed hereto marked **P1 (a), (b) and (c)** respectively.

02. The Petitioner is a non-profit making national non-governmental organization having *inter alia* as its objectives the protection, preservation and conservation of nature and environment and the promotion and advancement of the concepts of environmental justice and environmental good governance in the interests of the general public.

03. The Petitioner is genuinely concerned with the implementation and enforcement of the laws relating to the protection of nature and environment and responding to the constitutional dictates enshrined in the **Chapter on Directive Principles of State Policy and Fundamental Duties** in the **Constitution of the Democratic Socialist Republic of Sri Lanka** is interested in performing the fundamental duty imposed on every person by **Article 28 (f)** of the said **Constitution** to protect nature and conserve its riches. Since its inception, the Petitioner in the said capacity has initiated and/or engaged in and/or contributed to a number of activities in such regard, in proof of which is annexed hereto the affidavit marked **P2**.

04. The 1st Respondent is a body corporate established under and in terms of the provisions of **section 2** of the **National Environmental Act No. 47 of 1980**, as amended and may sue or be sued in its corporate name. It is responsible for the due exercise, performance and discharge of powers, duties and functions vested in, imposed on and assigned to under and in terms of the provisions, particularly of **sections 10 and 23** of the said **Act**.

05. The 2nd Respondent is the Minister in charge of the subjects of environment and natural resources and is a member of the Cabinet of Ministers (which is charged with the direction and control of the Government of the Republic under and in terms of the provisions of **Article 43 (1)** of the **Constitution**) and as such is an agent and/or a component of the executive arm of the Government.

06. The 3rd Respondent is the Minister in charge of the subjects of Provincial Councils and Local Government and is a member of the Cabinet of Ministers (which is charged with the direction and control of the Government of the Republic under and in terms of the provisions of **Article 43 (1)** of the **Constitution**) and as such is an agent and/or a component of the executive arm of the Government.

07. The 4th Respondent is the Chief Legal Officer of the State and is made a Respondent for the purpose of giving notice of this application.

08. The Petitioner states that generation of municipal solid waste, from both domestic and commercial sources, has grown dramatically in Sri Lanka over the past three decades owing to the population growth, urbanization, technological development and changing life styles of the people etc. It is estimated that about 3000 tonnes of municipal solid waste is collected per day throughout the country; *vide. 23 p.* of the document annexed hereto marked **P 3**. However, the actual generated quantum may be much higher.

09. The municipal solid waste comprises both domestic and commercial waste including dried sludge of sewage. Generally referred to as 'refuse' the municipal solid waste comprises garbage including food wastes, rubbish materials such as waste papers, glasses, metallic cans, plastic carry bags and plastic materials etc.

10. The prevalent municipal solid waste management practices in the country are highly deficient and outdated and lack public participation. Overall public apathy is observed in the manner of handling and disposal of municipal solid waste. A system of throwing waste on to the streets by the people and local bodies collecting such waste from the streets and disposing it in the most unhygienic manner is the current practice.

11. Generally, no storage of waste is being done at the source and instead domestic, commercial and industrial, including bio-medical, waste are thrown on to the streets, footpaths, drains and water bodies apparently treating them as receptacles of waste. Recyclable waste material is not segregated at the origin and is disposed on the streets. Construction and demolition wastes are also deposited on the roadside or open spaces, obstructing traffic and causing a nuisance; *vide* the photographs annexed hereto marked **P 4 (a) – (j)**.

12. The mismanagement and improper disposal of municipal solid waste raises a number of serious visible, invisible and sometimes irreversible, environmental and other issues:

i. Environmental Implications -

a. Soil Pollution -

Dumping of municipal solid waste in environmentally sensitive areas such as wetlands, river banks and reservation etc. is a common phenomenon practiced by the people and some local authorities. Much of the wastes dumped are bio-degradable; the predominantly anaerobic degradation of waste produces a range of leachate components in the short and long term. Pollutants including greenhouse gases, volatile fatty acids, and heavy metals and inorganic and organic compounds are known to arise from such dumps. In addition to this it is possible for relatively recalcitrant and perhaps toxic chemicals disposed in landfills to leach, depending on the physicochemical and environmental conditions within the landfill and the chemistry of the substance.

b. Water Resources Pollution -

Dumping of municipal solid waste causes toxic materials to be leached and to seep in to the soil which not only seriously affects the productivity of land but also the purity of life saving ground water resources. Unscientific open disposal of wastes causes pollution of surface and ground water resources with heavy metals and other contaminants through leachate, which pose serious problems of environmental deterioration and health risks. Such problems are aggravated further by open dumping of wastes on the banks of and direct discharge to natural water ways.

c. Air Pollution -

Inefficient combustion of municipal solid waste either in open air or in plants with inadequate emission control systems, results in emission of pollutants including particulate matter and noxious gases. Many of such compounds are toxic, relatively or very recalcitrant, bio-accumulate and may potentially contribute to environmental and health problems in the locality.

d. Visual Pollution -

Haphazard throwing and dumping of municipal solid waste reduce aesthetic value and scenic beauty of the environment, thus creating an offensive visible impact on human beings. Compounded by the unpleasant stench emanating from the rotting wastes it badly affects the tourist industry too.

ii. Ecological Impacts -

Earth has a limited carrying capacity and therefore haphazard disposal of municipal solid waste causes irreversible damages to the ecosystems. Heavily contaminated sites are often associated with severe disruption of ecosystem functions. Plant species diversity and abundance is often low *i.e.* the species are restricted to those tolerant of the contaminating substances. Other components of the ecosystem *e.g.* micro-organisms and invertebrates are also adversely affected showing low abundance often linked to low activity. The impact of the contaminating substances on the microbial community may have a deleterious effect on the cycling of nutrients *i.e.* biogeochemical cycles in the ecosystem causing further degeneration.

iii. Health and Sanitary Problems -

Improper municipal solid waste management gives rise to problems of health and sanitation. Rodents and vector insects transmit various epidemic diseases. People are exposed to high health risks and frequently suffer from respiratory tract infections and gastro-intestinal parasitic infestations and to unpleasant and nauseating odour/stench emanating from reeking/rotting wastes. Additionally, the decomposing wastes at dumping sites provide a promising substrate for pathogenic micro-organisms constituting yet another threat.

iv. Other Implications -

Contaminated sites commonly contain a large number of potentially harmful substances which may be solids, liquids or gases. A number of other hazards may arise from contaminated lands including uptake of contaminants by food crops and entry into the human food chain, chemical degradation of building materials and fires and explosions.

13. The generation of waste is a natural consequence of life and hence an intrinsic aspect of any industrial or developing society. Every population must manage the disposal of its wastes. Today municipal solid waste disposal presents enormous challenges for protection of the environment and for safety and well-being of human beings.

14. The Petitioner states that due to the absence of proper collection, management and disposal practices, municipal solid waste has become a grave problem in Sri Lanka. It is aggravated further by the failure to adopt appropriate reuse and recycling practices.

15. The primary responsibility for the protection, preservation and conservation of the country's environment and ecological heritage for the well-being, development and advancement of the people lies with the Government of which the said Respondents are components and/or agents and/or instrumentalities, as the guardian of the natural resources of Sri Lanka on behalf of the present and future generations of the people.

16. The Petitioner states that the recognition of such responsibility by the Government of Sri Lanka is manifest by it becoming a contracting party and subsequently ratifying, or acceding to or becoming a signatory to a number of international instruments relating to environmental protection such as;

- i. Stockholm Declaration on Human environment, 1972
- ii. Paris Convention for the Protection of the World Cultural and Natural Heritage, 1972
- iii. Rio Convention on Biological Diversity, 1992

- iv. Rio Declaration on Environment and Development, 1992
- v. Paris Declaration on the Responsibilities of Present Generations Towards Future Generations, 1997
- vi. Johannesburg Declaration on Sustainable Development, 2002

The Petitioner annexes hereto true copies of the aforesaid instruments marked **P 5 (a) - (f)** respectively.

17. On account of the aforesaid facts and circumstances, the Petitioner states that the preparation and implementation of a comprehensive National Policy for Municipal Solid Waste Management covering a broad spectrum from generation to disposal has become a necessity to resolve or to mitigate the problems associated with current practices.

18. Thus, for the aforesaid reasons, the Petitioner, in the public interest and responding to the constitutional dictates enshrined in the said **Chapter on Directive Principles of State Policy and Fundamental Duties** in the **Constitution**, requested through its Attorney at Law, the Chairman and the Director General of the said 1st Respondent, to take cognizance of the aforesaid facts and circumstances and to take action forthwith to conduct research and/or studies as to the nature, extent and causes of the problems associated with Municipal Solid Waste Management, and to device and to recommend to the said 2nd Respondent for implementation a comprehensive National Policy for Municipal Solid Waste Management, in the performance of the statutory duty in compliance with the provisions, particularly of **sections 10 (b), (c), (d), (e), (f) and (g) and 23** of the said **National Environmental Act** and the said 2nd Respondent to implement the same by formulating Regulations in that regard in the performance of his statutory duty in compliance with the provisions, particularly of **section 32 (2) (b), (h), (i) and (q)** of the said **National Environmental Act** or otherwise as required by law as being consonant also with the provisions contained in **Articles 27 (14) and (15) and 28 (f)** of the said **Constitution**. True copies of the said letters dated 15. 05. 2007 are annexed hereto marked **P 6 (a), (b) and (c)** respectively. However, they have failed to respond and to take necessary actions satisfactorily in that regard up to date.

19. Being aggrieved by the said inaction and/or failure to act and/or neglect to perform duty of/by the said 1st and 2nd Respondents, the Petitioner respectfully seeks to invoke the jurisdiction of Your Lordships' Court under and in terms of the provisions of **Article 140** of the **Constitution** for orders in the nature of a *writ of mandamus* and for other incidental relief, on the following among other grounds that may be urged by Counsel at the hearing of this application.

i. The said inaction and/or failure to act and/or neglect to perform duty of/by the said Respondents is/are wrong, illegal and contrary to law.

ii. It is submitted with respect that the said Respondents by the said unlawful and/or illegal and/or wrongful inaction and/or failure to act and/or neglect to perform duty have failed to perform the public statutory duty imposed on the said Respondents respectively by the provisions of **sections 10 (b), (c), (d), (e), (f) and (g) and 23** of the said **National Environmental Act** and **32 (2) (b), (h), (i) and (q)** of the said **National Environmental Act**.

iii. It is submitted further with respect that the said inaction and/or failure to act and/or neglect to perform duty of/by the said Respondents are obnoxious to the declared objectives of the aforesaid enactment as stated in its Long Title.

iv. It is respectfully submitted that the said inaction and/or failure to act and/or neglect to perform duty of/ by the said Respondents is/are in violation of the legitimate expectations of the citizens of Sri Lanka, as the said concept is judicially understood and/or interpreted.

v. It is respectfully submitted further that the said inaction and/or failure to act and/or neglect to perform duty of/by the said Respondents are detrimental to and/or in violation of the fundamental rights of the citizens of Sri Lanka, declared, recognized and guaranteed, particularly by **Articles 12 (1) and 14 (1) (f) of the Constitution** and thereby the said Respondents have failed in the constitutional duty imposed on all organs of government by **Article 4 (d)** to respect, secure and advance the fundamental rights declared and recognized by the **Constitution**.

vi. It is submitted with respect that the said inaction and/or failure to act and/or neglect to perform duty of/by the said Respondents is/are inconsistent with and/or repugnant to the **Directive Principles of State Policy and Fundamental Duties**, particularly those enunciated in **Articles 27 (2) (a) and (c), 27 (14), 27 (15) and 28 (a) and (f) of the Constitution**. According to **Article 27(1)**, the **Directive Principles of State Policy** are the guiding principles for the legislature and executive in the enactment of laws and the governance of the country. They are in the nature of an instrument of instructions, which both the legislature and executive must respect and follow.

vii. It is submitted further with respect that the organs of the government in which the said Respondents are components and/or agents and/or instrumentalities, are the guardians to whom the people have committed the care and preservation of environment, including the biodiversity of the country and thus, by the said inaction and/or failure to act and/or neglect to perform duty the said Respondents have failed and/or neglected to perform their duty in the said capacity of the 'Public Guardian' as the said concept is judicially formulated.

viii. It is respectfully submitted that the said inaction and/or failure to act and/or neglect to perform duty of/by the said Respondents are in violation and/or derogation of the **Concepts and Principles of Environmental Law** enshrined in the international conventions and declarations indicated in para. 16 above, particularly the **Concepts of Sustainable Development and Inter-generational Equity, Principle of Precautionary Action and Doctrine of Public Trust** which as has been judicially determined have become part of the domestic law of Sri Lanka.

20. The Petitioner humbly pleads that it has encountered difficulty in obtaining certain documents in further proof the matters set out herein and respectfully moves that Your Lordships' Court be pleased to permit the Petitioner in the said circumstances, to furnish them to Your Lordships' Court, as and when they are obtained.

21. The Petitioner has not invoked the jurisdiction of Your Lordships' Court in respect of this matter prior to this application.

WHEREFORE the Petitioner prays that Your Lordships' Court be pleased to:-

- a. Issue notice of this application on the Respondents in the first instance;
- b. Grant and issue an order in the nature of a *writ of mandamus* directing the 1st Respondent to conduct research and/or studies as to the nature, extent and causes of the problems associated with Municipal Solid Waste Management, and to devise and to recommend to the said 2nd Respondent for implementation a comprehensive **National Policy for Municipal Solid Waste Management**, in the performance of the statutory duty in compliance with the provisions,

particularly of **sections 10 (b), (c), (d), (e), (f) and (g) and 23** of the said **National Environmental Act**;

c. Grant and issue an order in the nature of a *writ of mandamus* directing the 2nd Respondent to formulate Regulations to implement the said **National Policy for Municipal Solid Waste Management** in the performance of his statutory duty in compliance with the provisions, particularly of **section 32 (2) (b), (h), (i) and (q)** of the **National Environment Act**;

d. Grant costs of this application;

e. Grant such other and further relief as to Your Lordships' Court shall seem meet.

Attorney at Law for the Petitioner