

**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.1112 / 2006

1. Saheed Mohamed Mubarak,
32/15, Service Road,
Puttalam.
2. Warnakulasuriya Austin Rodrigo,
Mampuri Wella,
Mumpuri.
3. Warnakulasuriya Peter Singho Thisera,
Ilanthiadi,
Norachcholai.
4. Edirippullige Rexi Jayalal Fernando,
Ilanthiadi,
Norachcholai.
5. Madana Singhage Don Dilan Chaminda,
Paniadiya,
Norachcholai.
6. Ponnabila Withanalage Jude Nevil Antony
Appuhamy,
Paniadiya,
Norachcholai.
7. Senanayake Arachchilage Dimuthu Kelum,
Kalpitiya Road,
Norachcholai.
8. Shahul Hameed Abdul Wahab,
Kalpitiya Road,
Norachcholai.

PETITIONERS

v.

1. Ceylon Electricity Board,
50, Chittampalam A. Gardiner Mawatha,
Colombo 02.

2. Chairman,
Ceylon Electricity Board,
50, Chittampalam A. Gardiner Mawatha,
Colombo 02.
3. Central Environmental Authority,
104, Robert Gunawardena Mawatha,
Battaramulla.
4. Chairman,
Central Environmental Authority,
104, Robert Gunawardena Mawatha,
Battaramulla.
5. Director,
Coast Conservation Department,
New Secretariat, Maligawatta,
Colombo 10.
6. Chairman,
Marine Pollution Prevention Authority,
11- C, Tower Building,
25, Station Road,
Colombo 04.
7. North Western Province Environmental
Authority,
Maligawa,
Kurunegala.
8. Minister of Power and Energy,
Ministry of Power and Energy,
80, Sir Earnest de Silva Mawatha,
Colombo 07.
9. Attorney General,
Attorney General's Office,
Hulftsdorp Street,
Colombo 12.

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

On this 12th day of July 2006

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

01. The Petitioners are citizens of Sri Lanka, genuinely concerned with the protection of nature and environment in the interests of the general public, the protection of the fundamental rights of the people, the enforcement of laws of relating to the protection of the

environment and fundamental rights and the advancement of the concept of good governance, 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**, are interested in the performance of the fundamental duties imposed on every person by **Article 28 (a), (e) and (f)** of the said **Constitution** ; namely to uphold and defend the Constitution and the law, to respect the rights and freedoms of others and to protect nature and conserve its riches.

02. The 1st Respondent established under and in terms of the provisions of **section 2(1)** of the **Ceylon Electricity Board Act No. 17 of 1969**, as amended is a body corporate and may sue and be sued in its corporate name under and in terms of the provisions of **section 2(2)** of the said **Act**.

03. The 2nd Respondent is the Chairman of the said 1st Respondent appointed under and in terms of the provisions of **section 6(1)** of the said **Ceylon Electricity Board Act**.

04. The 3rd Respondent established under and in terms of the provisions of **section 2(1)** of the **National Environmental Act No. 47 of 1980**, as amended is a body corporate and may sue and be sued in its corporate name under and in terms of the provisions of **section 2(3)** of the said **Act**.

05. The 4th Respondent is the Chairman of the said 3rd Respondent appointed under and in terms of the provisions of **section 3(2)** of the said **National Environmental Act**.

06. The 5th Respondent is the Director of the Coast Conservation Department appointed under and in terms of the provisions of **section 3(a)** of the **Coast Conservation Act No. 57 of 1981**, as amended.

07. The 6th Respondent is the Chairman of the Marine Pollution Prevention Authority, appointed under and in terms of the provisions of **section 2(4)** of the **Marine Pollution Prevention Act No. 59 of 1981**, established under and in terms of the provisions of **section 2(1)** of the said **Act**.

08. The 7th Respondent is purported to be a body corporate, which may sue or be sued in its corporate name, purportedly established under and in terms of the provisions of **section 2** of the **North Western Province Environmental Statute No.12 of 1990**, purportedly made by the Provincial Council of the North Western Province and is made a Respondent without prejudice to the Petitioners' right to impugn its constitutionality and/or legality.

09. The 8th Respondent is the Minister in charge of the subjects of power and energy 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**.

10. The 9th Respondent is the Chief Legal Officer of the State and is made a Respondent for the purpose of giving notice of this application.

11. The Petitioners state that the 1st Respondent, under the direction and/or guidance of the Ministry of Power and Energy, of which the 8th Respondent is the Minister in charge, on or about 11.05.2006, has commenced construction of a coal fired thermal power plant named "Puttalam Coal Power Project at Norachcholai", in proof of which are annexed hereto an

advertisement published by the said 1st Respondent and reports published, in national newspapers marked **P1(a) - P1(d)** respectively.

12. The site of the said Project is located in an area of 300 acres (102.6 ha) approximately 140 km north of Colombo along the shoreline about 100 m inland between the villages of Narakkali in the South and Erakkiliajadi, said Elanthadi in the North (geographical coordinates : approximately 8^o 02' latitude North and 79^o 43' longitude East) within the Divisional Secretary's Division of Kalpitiya in the Administrative District of Puttalam in the North Western Province of Sri Lanka, in proof of which are annexed hereto the maps marked **P2(a) - P2(l)**.

13. The conceptual design of the said Project is believed to envisage the following features:

i. Area Dimensions -

The Project site will cover a 330 m wide and 1.8 km long land strip (about 60 ha). The width will protrude beyond 330 m, towards the southern end, to about 450 m eastwards to accommodate the outdoor switch yard having a length of about 240 m (about 2.9 ha). A buffer zone having a width of about 240 m East of the ash dump and the coal stock yard, and of about 120 m East of the outdoor switch yard will surround the eastward boundary of the power plant (about 39.7 ha).

ii. Power Plant -

The power plant will be built in 3 stages of 300 mw capacity each, up to the final capacity of 900 mw. Each power generating unit will comprise;

- a. steam generating plant
- b. emission control system with a 150 m high stack
- c. fuel supply system
- d. turbine generator plant
- e. cooling water system
- f. electrical equipment

iii. Coal Unloading Facility -

A deep sea jetty that extends seawards for about 4.2 km to the minus 15 bathymetric contour will be constructed for unloading coal imported by big ocean going vessels into hoppers. Transfer of coal from the hoppers to the coal stockyard will be by a conveyor belt installed on a trestle.

iv. Sea Water Intake and Outfall Pipes -

Sea water for the cooling system will flow to the pump pit in the onshore pump house by concrete intake pipes submerged under the beach and the sea bed and will be discharged by equally submerged pipes. Both intake and outfall pipes will extend at least 200 m into the sea until a depth of 5-6 m is reached.

v. Coal Stockyard -

The coal stockyard will be sufficient to store coal for 2 months consumption at full load operation of the plant. It will have a short term stockpile for continuous operation and a long term stockpile.

vi. Fuel Storage -

Light fuel oil for boiler start-up and support on low-load operation will be stored at a tank farm with sufficient capacity to match the needs of the plant.

vii. Ash Dump -

Ash disposal area on site will be sufficient to accommodate approximately 10% of the ash produced.

viii. Sea Water Desalination Plant -

Fresh water for consumption by the boiler plant for feed water, by the handling systems of coal and ash for spray water and by the fire fighting system and for domestic use will be obtained by sea water desalination.

ix. Equipment Unloading Jetty -

A jetty that extends seawards for approximately 400m allowing barges to berth at a sea depth of 5m, will be constructed for unloading heavy equipments and materials required for the power plant construction transported by geared vessels.

x. Transmission Corridor -

The generated power will be fed from the station switchyard into the national grid at 220 kv via a 115 km long transmission line to a proposed substation at Veyangoda, which will later be extended up to Anuradhapura for operating the plant at full capacity of 900 mw.

xi. Common Auxiliary/Ancillary Systems and Buildings -

- a. water treatment plant
- b. solid and liquid waste treatment plants
- c. compressed air system and fire fighting system
- d. chlorination plant and chemical storage
- e. workshop, laboratory and store for spare parts
- f. administration building

The Petitioners annex hereto an advertisement published and designs prepared by the said 1st Respondent marked **P3(a) - P3(k)** in such regard.

14. The Petitioners state that in 1993, on the request of the Government of Sri Lanka (GOSL), the Japan Consulting Institute (JCI) conducted an investigation and a survey of the west coast of Sri Lanka to identify a suitable site for a Coal Fired Thermal Power Plant and a pre-feasibility study of 4 such sites, and ranked Norachcholai as the least suitable of such sites : Subsequently in 2001, the Government of Sri Lanka appointed RAMBOLL Consultants of Denmark for an independent review of the Engineering Services for the proposed Coal Fired Thermal Power Plant at Norachcholai carried out by Electrowatt Engineering Ltd. of Switzerland, which expressed doubts as to the economic feasibility of certain aspects of the said Project especially the Coal Unloading Jetty; *vide*. the article annexed hereto marked **P4**.

15. The Petitioners state that the said Project will have the following adverse impacts, real and potential, on the environment during the construction phase:

i. Solid Waste -

Solid waste generated from activities during constructions will include;

a. Soil Material from Excavation and Earth Removal -

- * waste from excavation and earthworks
- * dust from construction activities

b. Domestic Waste -

- * organic material
- * metal
- * glass
- * wood
- * plastic

ii. Transport -

Road traffic will increase for the transport of local material and labour.

iii. Air Quality -

Potential sources of air-borne dust are;

- a. earthmoving
- b. vehicular movement
- c. on-site concrete mixing and batching
- d. exhaust from construction vehicles and equipment

iv. Noise -

Different types of equipment will be required for construction and construction noise, intermittent in nature and impulsive in character, may reach considerably varying high levels during different phases of work

v. Water and Liquid Effluents -

Potential impacts that may affect the quality and availability of local ground water resources include;

a. Impact on Groundwater Resources -

Dewatering by pumping of large amounts of groundwater to achieve a drawdown of groundwater level to a sufficient depth and for a duration necessary for the construction of the foundations of some of the structures will cause disturbance of the dynamic and budgetary equilibrium of the groundwater resources due to the relatively high permeability of the sandy aquifer with following possible repercussions;

- * enhancement of intrusion of salt water into the fresh water aquifer

- * lowering of the groundwater level in domestic and irrigation wells located within the radius of influence generated by dewatering, with consequent decrease of the pumping yield of the agro-wells

b. Transportation, Use and Storage of Liquid Polluting Substances -

Spills of fuels or other polluting liquids occurring accidentally during the construction works could easily percolate through the essentially sandy and very permeable soil above the groundwater table and rapidly reach the naturally unprotected groundwater body.

c. Water Resources Needs -

Fresh water needed for construction activities will exploit the limited ground water resource, currently in heavy demand for crop irrigation and drinking uses.

vi. Impact on Terrestrial Ecological Resources -

Grading and leveling the site, in preparation for laying the foundations will destroy the fauna and flora.

vii. Impact on Marine Ecological Resources -

a. Coal and Equipment Unloading Jetties -

Environmental concerns arising from the construction of a long jetty of 4.2 km for unloading and transporting of coal and a short jetty of about 500 m for unloading of equipment are as follows;

*** Impact on Sea Bed Sediments and Water Quality -**

Pile driving will result in localised redistribution and resuspension of sediments. Vessels used for transporting jetty construction materials will release fugitive quantities of hydrocarbons to the coastal waters.

*** Impact on Boat Navigation -**

Jetties may have an impact on boat navigation and on access to the beach by fishermen and other users.

*** Impact on Coral Reefs -**

Proposed jetty alignment may affect the suspended sediment climate in the coral reefs in the vicinity.

*** Impact on Fish and Fishing Activities -**

Disturbance of Water Column during jetty construction may have a limited localized impact on fish. Construction noise from pile driving and associated work may discourage fish from coming in-shore adjacent to the site. Jetty construction and site civil works will disrupt and/or prevent the operation of beach seines adjacent to the site boundary.

*** Impact on Marine Vegetation -**

Moving sea bed sediments offshore of the power plant are unfavourable to the growth of marine grasses and sea weeds.

*** Impact from Decommissioning the Jetty -**

Rubble accumulating from the shoreline to the minus 6 m bathymetric contour, following decommissioning of jetties after the expected life span (about 60 years) would form a breakwater and severely disrupt the sediment movement towards the shoreline.

b. Cooling Water Inlet and Outlet -

Excavation of trenches for burrying cooling water inlet and outlet pipes below the site ground surface and the sea bed will result in resuspension of sediments in the water column and localized redistribution of sediment at the sea bed of the inlet and outlet structure is inevitable.

viii. Impact on Soil and Land Use -

Larger amount of sand (about 500,000 m³ - 750,000 m³) are required for constructing the plant platform and other works.

a. Mining Sand Dunes -

Mining sand dunes would raise a number of concerns including diminution of protective function, clearing of vegetation cover, increase of erosion and uncovering the ground water table.

b. Dredging Off-Shore Sands -

Sand extraction technique of airlift pumping of a mixture of sand and sea water from the sea bed directly to the plant site would result in an infiltration of a large quantity of sea water (about 800,000 m³) into the soil thus inducing a further increase in the already elevated salinity of the groundwater table.

ix. Impact on Human Population -

Necessity for resettlement of the local population will occur during the construction phase which will then extend to the operational phase.

x. Impact of the Transmission Line -

Proposed transmission line corridor passes through agricultural lands with fruit and coconut plantations, home gardens and paddy fields. Land clearing will result in the destruction of such cultivation and habitats of a variety of animal species.

16. The Petitioners state that the said Project will have the following adverse impact, real and potential, on the environment during the operational phase:

i. Impacts on Physical Resources -

a. Solid Waste -

Solid waste produced by the operation of the power plant will constitute;

- * coal particulate from coal handling and dust suppression
- * fly ash and bottom furnace ash
- * domestic waste
- * fine ash particulate from ash runoff pond and coal sedimentation pond
- * waste proceeding from cleaning of cooling water process
- * sludge proceeding from wastewater treatment plant
- * slime from the maintenance of runoff drainage network

Environmental concerns related to the handling and disposal of solid waste are;

- * emission of airborne dusts and fine particulate matter to the surrounding atmosphere
- * occupation of land by landfills
- * contamination of ground water by waste leachate through landfills
- * effects on landscape aesthetics

b. Water Resources, Waste Water and Liquid Effluents -

*** Water Demand -**

Extremely limited and currently over-exploited capacity of the local aquifer cannot meet the high demand for fresh water for various purposes.

*** Waste Water -**

Waste water emanating from various sources such as coal stockpile leachate, ash landfill percolate, boiler blow-down, effluents from demineralization plant, metal cleaning liquid waste and sanitary and domestic sewage, may cause pollution of natural surface water and, sea when the final effluent is discharged.

*** Light Fuel Oil and Other Chemicals -**

There is a possibility of spill and seepage into the soil of the light fuel oil and other chemicals needed for various processes.

*** Desalination Brine -**

Brine produced by the desalination process when evacuated through the cooling sea water discharge pipe back into the sea may induce an appreciable change of the original salinity of the sea water.

c. Thermal Effluent -

Discharging the warmed cooling water at a point-offshore may have severe consequences for marine organisms and corals.

d. Air Quality -

Pollutants such as SO₂, NO_x, and SPM (Suspended Particulate Matter) resulting from the operation of the coal power plant may affect ambient air quality and, if carried over long distances depending on the variations in direction and speed of the wind,

may affect densely populated areas, causing respiratory and reproductive disorders and even acid rains.

e. Noise -

Intense noise generated by the operation of the various equipments may affect the noise levels of the neighbourhood of the power plant.

ii. Impacts on Ecological Resources -

a. Terrestrial Ecology -

Clearance of land extending over an area of about 300 Acres (102.6ha) and over a distance of 110 km for the transmission corridor may have serious impacts on terrestrial ecological resources. The transmission line particularly, poses a potential threat to migratory birds; the lines are often invisible to birds and collisions can occur.

b. Aquatic Ecology -

*** Coal Loss During Unloading -**

Coal spillage into the ocean during unloading from a bulk carrier, onto the conveyor belt of the long jetty, can smother stationary animals and plants attached to the sea bed.

*** Coal Dust Emissions During Unloading -**

Dust generated through handling coal which will ultimately fall into the ocean, may have an impact on marine resources.

*** Water Quality -**

Coal contains some hydrocarbons that could leach into the marine water. Ships and barges used for transport of coal are powered by diesel engines that can release fugitive quantities of hydrocarbon to the sea.

*** Vessel Movements -**

Shipping and barging movements associated with coal transport will add to the existing traffic in the coastal waters, having an impact on marine ecology and environment.

*** Cooling Water Discharge -**

Exhaust warmed water discharged from the power plant may have a detrimental effect on marine plant and animal biomass which in turn may affect coastal fish populations and coastal fishing economy.

*** Sea Water chlorination -**

Hypochlorite treated water, used to dose cooling water system, on discharge to the sea may have an impact on marine life.

iii. Impacts on Human Population and Socio-Economics -

The said Project may have certain potential adverse effects on the population and economy of the area.

a. Impacts on the Surrounding Area -

Potential impacts of the plant on the surrounding area, which might affect the population directly or indirectly include;

*** Ground Water -**

Fragile ground water resources of the area may deteriorate due to use by the said Project and may get contaminated by saline intrusion and leakage of the oils and chemicals

*** Noise -**

Nearby human settlements may suffer from construction noise and disturbance caused by increased road transport.

*** Dust and Ash -**

Dust generated by construction activities and road transport and ash emanating from burning of coal may have adverse effects on local population.

*** Air Quality -**

Emissions from the plant containing SO₂, NO_x, and SPM could have deleterious effects on the health of the neighbouring communities; e.g. respiratory and reproductive disorders and could cause acid rain.

*** Coastal Erosion -**

Construction of marine structures will trigger further erosion of the coast already under severe threat.

b. Impacts on Resident Population -

Most important socio-economic impact is the impact on the population presently living in and around the said Project site area.

*** Loss of Land -**

A significant portion of the land to be occupied by the said Project comprises coconut plantations and another portion is used for seasonal crops.

*** Impact on Livelihoods -**

Damage and disruption caused to agricultural and fishing activities will result in loss of income.

*** Impact on Health -**

Smoke emissions from the plant would pose serious problems for the health of the local population.

*** Security Concerns -**

Creation of a security zone and stationing of security personnel in the area might interfere with the lifestyle and free movement of the local population.

c. Impacts on Scenic Protected Areas -

The said Project may cause adverse impacts on areas of high scenic and recreational value especially Talawila and Kandakuliya beaches.

17. The Petitioners state that on account of the aforesaid adverse impacts on the environment, abiotic, biotic and human, real and potential, the said Project has attracted much public criticism and opposition (*vide*. news paper cuttings annexed hereto marked **P5(a) - P5(h)**) and therefore, unless the cumulative impact of the said Project is assessed properly and precautionary measures are taken adequately, it would cause an irreparable and/or irreversible damage and destruction to the environment, ecological balance and interests of the people of the area.

18. The Petitioners state that the primary responsibility for the protection, preservation and conservation of the nature and environment and for the exploitation and utilization of such resources in a rational manner for the well-being, development and advancement of the people of Sri Lanka lies with the Government of which the Respondents are components and/or agents, as the guardian of the natural resources of Sri Lanka on behalf of the present and future generations of the people of Sri Lanka.

19. The Petitioners state 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 conventions and declarations 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. London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972
- iv. World Charter for Nature, 1982
- v. Rio Convention on Biological Diversity, 1992
- vi. Washington Declaration on Protection of the Marine Environment from Land Based activities, 1995
- vii. Paris Declaration on the Responsibilities of Present Generation Towards Future Generation, 1997
- viii. Johannesburg Declaration on Sustainable Development, 2002

The Petitioners annex hereto true copies of the said conventions/declarations marked **P6(a) - P6(h)** respectively .

20. Thus, for the aforesaid reasons, the Petitioners in their capacity as citizens genuinely concerned with the protection of nature and environment in the interests of the general public, the protection of the fundamental rights of the people, the enforcement of the laws relating to the protection of the environment and fundamental rights and the advancement of the concept of good governance, and responding to the constitutional dictates enshrined in the **Chapter on Directive Principles of State Policy and Fundamental Duties** of the **Constitution** requested through their Attorney at Law the said 2nd Respondent and the General Manager of the said 1st Respondent, by letters dated 27.05.2006, which were copied to the said 4th, 5th and 8th Respondents to take cognizance of the aforesaid facts and circumstances and to take prompt action in the performance of the statutory duty in compliance with provisions, particularly of **Section 23AA** of the said **National Environmental Act** or otherwise as required by law, to obtain approval for the implementation of the said Project from the appropriate Project Approving Agency (PAA) after submitting an Initial Environmental Examination (IEE) Report or an Environmental Impact Assessment Report (EIA), as mandated by the provisions of **section 23BB (i)** of the said **National Environmental Act** and as being consonant also with the provisions contained in **Articles 4(d), 27(2) (a), (b) and (c), 27(9), 27(14) and 28(a) and (f)**. True copies of the said letters are annexed hereto marked **P7(a)** and **P7(b)** respectively.

21. The Petitioners requested further, through their Attorney at Law the said 4th Respondent and the Director General of the said 3rd Respondent by letters dated 27.05.2006, which were copied to the said 2nd, 5th and 8th Respondents, to take action forthwith in the performance of the statutory duty in compliance with the provisions, particularly of **section 23BB (i)** of the said **National Environmental Act** or otherwise as required by law, to require from the said 1st Respondent, the Proponent of the said Project (PP), to submit an Initial Environmental Examination (IEE) Report or an Environmental Impact Assessment (EIA) Report relating to the said Project and to obtain approval for the implementation of the said Project as mandated by the provisions of **section 23AA** of the said **National Environment Act**, being of the view that owing to the magnitude, inter-provincial nature and cumulative impact of the said Project, the appropriate Project Approving Agency (PAA) be the said 3rd Respondent. True copies of the said letters are annexed hereto marked **P7(c)** and **P7(d)** respectively.

22. The Petitioners stated that, in any event, approval for such Project could not have been granted by such Project Approving Agency (PAA) without first being furnished with an Initial Environmental Examination (IEE) Report or Environmental Impact Assessment Report (EIA) as mandated by the provisions of **section 23BB (i)** of the said **National Environmental Act** and without the concurrence of the said 3rd Respondent, as mandated by **Reg. 3** of the **National Environmental (Procedure for Approval of Projects) Regulation No. 01 of 1993** (*vide. Gazette Extraordinary No. 772/22 dated 24.06.1993*) in as much as “*construction of thermal power plants having generation capacity exceeding 25 mw*”, “*installation of overhead transmission lines of length exceeding 10 km and voltage above 50 kv*” and “*clearing of land areas exceeding 50 ha*”, being prescribed projects as per **Order** of the Minister of Environment under **section 23Z** of the said **National Environmental Act** dated **18.06.1993** (*vide. Gazette Extraordinary No. 772/22 dated 24.06.1993*). The Petitioners annex hereto a true copy of the said **Gazette Notification** marked **P8**.

23. The Petitioners brought to the notice of the said Respondents in the said letters the solemn undertaking given to the Court of Appeal in **C.A. Ap. No. 318/98** of **28.06.2001**, a true copy of which is annexed hereto marked **P9**, that “*in the event the said power plant is to be located at Norachholai would go through the provision of the NEA Environmental Impact*

Assessment”, on being directed by the Cabinet of Ministers not to locate the said Coal Power Plant at Norachcholai and to identify a suitable alternate site.

24. Nevertheless, if the said 1st Respondent had conducted an Environmental Impact Assessment (EIA) with regard to the said Project and obtained approval for the same from an appropriate Project Approving Agency (PAA) in compliance with the aforesaid statutory provisions and the Order of the Court of Appeal in the aforementioned case, as was claimed in the advertisement published in the national newspapers on 07.05.2005 (*vide. P3(a)*), the Petitioners requested from the said Respondents an adequate opportunity to inspect and examine all such documents relevant to the said Environmental Impact Assessment (EIA) process and to obtain copies of the same at their expense so as to enable them to make an informed decision.

25. The Petitioners state that such construction of the said Project in contravention of the provisions, particularly of **section 23AA** and **23BB** of the said **National Environmental Act** and the **Regulations** referred to above renders such construction unauthorized and/or unlawful and/or illegal and hence constitute an offence punishable under and in terms of the provisions, particularly of **section 31** of the said **National Environmental Act**.

26. The Petitioners state that the said Respondents have failed to respond and to take necessary action up to date.

27. Being aggrieved by the said inaction and/or failure to act and/or neglect to perform duty by the said 1st, 2nd, 3rd and 4th Respondents, the Petitioners respectfully seek 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 by the said 1st, 2nd, 3rd and 4th Respondents is/are wrong, illegal and contrary to law.

ii. It is submitted with respect that the said 1st, 2nd, 3rd and 4th 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 by the provisions of **sections 23AA** and/or **23BB** 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 is/are obnoxious to the declared objectives and express provisions of the aforesaid enactment.

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 detrimental to and/or in violation of the fundamental rights of the citizens of Sri Lanka, including the Petitioners, declared, recognized and guaranteed, particularly by **Articles 12(1)** and **14(1) (a), (g) and (h)** 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**.

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 is/are in violation of the legitimate expectations of the citizens of Sri Lanka, including the Petitioners, as the said concept is

judicially understood and/or interpreted, since the said Respondents are estopped from denying and/or dishonouring the solemn undertaking given to the Court of Appeal in **C.A. Ap. No. 318/98** of 28.06.2001.

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), (b) and (c), 27(9), 27(14) 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 instruction, which both the legislature and executive shall respect and follow.

vii. 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 is/are in violation and/or derogation of the **Concepts and Principles of Environmental Law** enshrined in the international conventions and declarations indicated in para. 19 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.

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 is/are inconsistent with and/or repugnant to and/or in derogation of the **Concept of the Rule of Law** and the **Democratic Principle of Good Governance** with its ancillary **Concepts of Openness, Transparency and Public Accountability**.

ix. It is respectfully submitted further that, in any event, the said inaction and/or failure act and/or neglect to perform duty of/by the said Respondents is/are arbitrary, unreasonable and irrational in that the long delay in implementing the said Project vitiates any legal validity of the previous Environmental Impact Assessment study done in the year 1998. The respective phases of the said Project were being planned to be commissioned in the years 2003, 2004 and 2008 and owing to the demographic changes that have occurred in the meantime a new Environmental Impact Assessment study shall be a necessity.

28. The Petitioners humbly plead that they have encountered difficulty in obtaining certain documents in further proof of matters set out herein (**vide. P7(a) - P7(d)**) and respectfully move that Your Lordships' Court be pleased to permit the Petitioners in the said circumstances to furnish them to Your Lordships' Court, as and when they are obtained. In any event the previous Environmental Impact Assessment Study Report is available in the record of **C.A. Ap. No. 318/98** which Your Lordships' Court be pleased to call for and examine if and when necessary.

29. The Petitioners state that grave and irreparable loss and harm will be caused to their rights and interests unless the implementation of the said Project is stayed. However, owing to the uncertainty of the current stage of the Environmental Impact Assessment study the Petitioners respectfully move that Your Lordships' Court be pleased to permit the Petitioners to seek an appropriate interim relief at an appropriate stage.

30. The Petitioners have not invoked the jurisdiction of Your Lordships' Court in respect of this matter prior to this application.

WHEREFORE the Petitioners pray 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 and/or 2nd Respondents to conduct an Environmental Impact Assessment in respect of the Puttalam Coal Power Project at Norachcholai, and to obtain approval for the same from the 3rd Respondent in the performance of the statutory duty in compliance with the provisions, particularly of **Section 23AA** of the **National Environmental Act**, as amended;
- c. Grant and issue an order in the nature of a *writ of mandamus* directing the 3rd and/or 4th Respondents to require from the 1st and/or 2nd Respondents to conduct an Environmental Impact Assessment in respect of the Puttalam Coal Power Project at Norachcholai and to obtain approval for the same, in the performance of the statutory duty in compliance with provisions, particularly of **Section 23BB** of the **National Environmental Act** as amended;
- d. Grant Costs of this applications;
- e. Grant such other and further relief as to Your Lordship' Court shall seem meet.

Attorney at Law
for the Petitioners