

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

*In the matter of an application for an order
in the nature of a writ of certiorari
under and in terms of the provisions of
Article 140 of the Constitution*

and

C.A. Ap. No. 1055 / 2006

*for a reference to the Supreme Court
for determination of questions relating to
the interpretation of constitutional provisions
under and in terms of the provisions of
Article 125 of the Constitution*

Withanage Don Hemantha Ranjith Sisira Kumara,
Executive Director,
Centre for Environmental Justice,
59/14, Kuruppu Road,
Colombo 08.

PETITIONER

v.

1. Mr. Athula Wijesinghe,
Chief Minister,
Provincial Council, North Western Province,
Chief Ministry, Maligawa,
Kurunegala.
2. Mr. Darmadasa Wanniarachchi,
Governor, North Western Province,
Governor's Office,
150, Kandy Road,
Kurunegala.
3. North Western Province Environmental
Authority,
Maligawa,
Kurunegala.
4. Central Environmental Authority,
104, "Parisara Piyasa",
Robert Gunawardena Mawatha,
Battaramulla.

5. Mr. Janaka Bandara Tennekoon,
Minister of Provincial Councils and Local
Government,
Ministry of Provincial Councils and Local
Government,
330, Union Place,
Colombo 02.
6. Mr. W.J.M. Lokubandara,
Speaker,
Parliament of the Democratic Socialist
Republic of Sri Lanka,
Sri Jayawardenapura,
Kotte.
7. 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 3rd day of July 2006.

The Petition of the petitioner abovenamed appearing by Ravindranath Dabare his Attorney at Law states as follows.

01. The Petitioner is a citizen of Sri Lanka and is the Executive Director of the Centre for Environmental Justice, No 59/14, Kuruppu Road, Colombo 08, an organization having *inter alia* as its objectives protection, preservation and conservation of nature and environment in the interests of the general public. The Petitioner is genuinely concerned with the implementation and enforcement of the laws relating to the protection of the 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 the performance of the fundamental duty imposed on every person by **Article 28 (f)** of the **Constitution**, to protect nature and conserve its riches, in proof of which is annexed hereto the affidavit marked **P1** indicating the environment related activities of the Petitioner during the past 16 years.

02. The 1st Respondent is the current holder of office of the Chief Minister of the Provincial Council of the North Western Province appointed under and in terms of the Provisions of **Article 154F (4)** of the **Constitution**.

03. The 2nd Respondent is the current holder of office of Governor of the North Western Province appointed under and in terms of the provisions of **Article 154B (2)** of the **Constitution**.

04. The 3rd 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 Provincial Council of the North Western Province and is made a Respondent without prejudice to the Petitioner's right to impugn its constitutionality and/or legality.

05. The 4th 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.

06. The 5th Respondent is the Minister in Charge of the subjects of Provincial Councils and Local Government and is a member of the Cabinet of Ministers.

07. The 6th Respondent is the current holder of office of the Speaker of the Parliament of the Democratic Socialist Republic of Sri Lanka elected in terms of the provisions of **Article 64 (1)** of the **Constitution**.

08. The 7th Respondent is the Chief Legal Officer of the State and is made a Respondent for the purpose of giving notice of this application.

09. The Petitioner states that the Provincial Council of the North Western Province had purportedly made a Statute entitled the **North Western Province Environmental Statute No. 12 of 1990**, a true copy of which is annexed hereto marked **P2**, which had purportedly received the assent of the then Governor on 10.01.1991 and had purportedly come into operation on 01.07.1993, being the date appointed for such purpose by notification in the Gazette, in proof of which is annexed hereto marked **P3**, a true copy of the said notification dated 24.05.1993 published in the **Gazette No. 780** dated **13.08.1993**.

10. The Petitioner states that a Provincial Council established under and in terms of the provisions of **Article 154A (1)** of the **Chapter XVIIA** of the **Constitution** introduced by the **13th Amendment to the Constitution of 1987**, for the purpose of devolution of power within the framework of a unitary state, may, subject to the provisions of the Constitution, make Statutes applicable to the Province for which it is established, with respect to any matter contained in **List 1** of the **Ninth Schedule (Provincial Council List)** and with respect to any matter contained **List III** of the **Ninth Schedule (Concurrent List)**, after consultation with Parliament, under and in terms of the provisions of **Articles 154G (1) and 5(b)** of the **Constitution** respectively.

11. The Petitioner states that the subject of '**Protection of Environment**' is contained in '**item 37**' of the '**Provincial Council List**' and in '**item 33**' of the '**Concurrent List**', but '**item 37**' of the '**Provincial Council List**' is qualified by the phrase "*within the province to the extent permitted by or under any law made by Parliament*".

12. The Petitioner states that the subject of '**Protection of Environment**' was included in such manner in the aforesaid 2 Lists so as to enable Parliament to deal with national and inter-provincial environmental issues and the Provincial Councils to deal with intra-provincial environmental issues within the parameters defined by Parliament by law, given the fact that environmental issues do not respect and in fact, transcends artificial geographical boundaries and/or territorial limits.

13. The Petitioner is advised to state and hence states that therefore that '**item 37**' of the '**Provincial Council List**' and '**item 33**' of the '**Concurrent List**' shall be read together and

given a harmonious construction/interpretation and when so read and construed/interpreted a Provincial Council cannot make a Statute validly and/or lawfully except within a framework set out by Parliament by law.

14. The Petitioner states that Parliament in its wisdom has refrained from enacting a specific law permitting the Provincial Councils to make Statutes on '**Protection of Environment**' *vide*. the document marked **P4(a)** and that there is no such legal provision in the **National Environmental Act No 47 of 1980**, as amended by **Acts No. 56 of 1988** and **No. 53 of 2000** or **Provincial Councils Act No. 42 of 1987**, as amended by **Acts No. 27 of 1990** and **No 28 of 1990** and **Provincial Councils (Consequential Provisions) Act No. 12 of 1989**, true copies of which are annexed hereto marked **P5 (a) - (c)**, **P6 (a) - (c)** and **P7** respectively.

15. The Petitioner verily believes that no other Provincial Council has made/purportedly made a Statute on the subject of environment and, though the Petitioner inquired of such matter from the said 5th Respondent through his Attorney at Law by letter dated 15.05.2006 (**P8**) the said Respondent has not responded to such letter to date.

16. The Petitioner has encountered a great difficulty in performing the role of 'an environmental activist' in his chosen area of endeavour, namely the protection, preservation and conservation of nature in the public interest, particularly within the geographical limits of the North Western Province, due to the denial of jurisdiction by the said 4th Respondent within the said Province owing to the purported existence of the said **North Western Province Environmental Statute**, although numerous issues causing grave and irreparable damage and destruction, real and potential, to the environment and ecological balance of the said area are in existence *e.g.* river sand mining in Maha Oya and Deduru Oya, clay mining in Dankotuwa and surrounding areas and sand dune mining in Kalpitiya; *vide*. the letters marked **P9 (a) and (b)**, the document marked **P10** [the Statement of Objections filed of record in C.A. Ap. No. 1866/2004] and the photographs marked **P11 (a) - P11 (x)**.

17. On account of the aforesaid facts and circumstances, the Petitioner states that a need has arisen to determine the constitutionality and/or legality of the said purported **North Western Province Environmental Statute**.

18. Being aggrieved by the said purported Statute, purportedly made by the said Provincial Council of the North Western Province, 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 an order in the nature of a *writ of certiorari* to have the same quashed 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 purported Statute is wrong, illegal, contrary to law and *ultra vires* the provisions of the **Constitution** and therefore *void ab initio*.

ii. It is submitted with respect that if the said purported Statute was made under '**item 37**' of the '**Provincial Council List**', it amounts to an unlawful and/or illegal exercise of power in as much as there is no law enacted by Parliament enabling Provincial Councils to make Statutes for the protection of the environment and therefore *ultra vires* the provisions of **Article 154G (1)** of the **Constitution**.

iii. It is submitted further with respect that in as much as it is not described in the Long Title of the said purported Statute as being inconsistent with the provisions of the said **National Environmental Act** which was in prior existence, the said purported Statute is in violation of the mandatory requirements contained in the provisions of **Article 154G (8)**, as judicially determined and/or interpreted and therefore *ultra vires* the provisions of the same.

iv. It is respectfully submitted that if the said purported Statute was made under '*item 33*' of the '**Concurrent List**', It amounts to an unlawful and/or illegal exercise of power in as much as in making the said purported Statute the said Provincial Council had not consulted Parliament in violation of the mandatory requirements contained in the provisions of **Article 154G (4)**, as judicially determined and/or interpreted and therefore *ultra vires* the provisions of the same.

v. It is respectfully submitted further that the making of the said purported Statute by the said Provincial Council of the North Western Province amounts to a usurpation and/or an encroachment of the domain, of the legislative power and/or Legislative Supremacy of Parliament enshrined in the provisions of **Articles 75 and 76 (1)** and reassured in **Article 154 G (10)**, of the **Constitution**.

vi. It is submitted with respect that the purported making of the said Statute by the said Provincial Council of the North Western Province is in violation of and/or in derogation of and/or repugnant to the Sovereignty of the People entrenched in the provision of **Article 3** of the **Constitution**, since in terms of the provision of **Article 4 (a)** of the **Constitution**, '*the legislative power of the People shall be exercised by Parliament, and by the People'* only.

vii. It is submitted further with respect that in view of the fact that the environmental issues do not respect and in fact transcend artificial geographical boundaries and/or territorial limits, the making of the said purported Statute by the said Provincial Council is arbitrary, unreasonable and irrational, without the extent and/or scope and ambit of authority being defined by Parliament by law.

19. The Petitioner is advised to state and hence states that for the aforesaid reasons, the then Governor of the said North Western Province ought not to have given assent to the said purported Statute but should have reserved the same for reference by the President to the Supreme Court for a determination that the said purported Statute is not inconsistent with the provisions of the Constitution, under the powers vested on the Governor by virtue of the provisions of **Article 154H (4)** of the **Constitution**.

20. The Petitioner is advised further to state and hence states that, as judicially determined the Provincial Councils being subsidiary legislative bodies and the Statutes made by such Provincial Councils being subordinate/delegated legislation, such Statutes shall be subject to judicial review on the grounds of unconstitutionality and/or illegality.

21. The Petitioner humbly pleads that he has encountered difficulty in obtaining certain documents in further proof of the matters set out herein, particularly the opinion said to have

been expressed by the said 7th Respondent as regards the constitutionality and/or legality of the said purported Statute, and respectfully moves that Your Lordships' Court be pleased to permit the Petitioner in the said circumstances, to furnish the same to Your Lordships' Court as and when they are obtained.

22. Although the impugned Statute purportedly came into force on 01.07.1993 (*vide.P3*) and this application is being filed in June, 2006 having regard to the facts and circumstances as pleaded above and the public interest nature of the matter Your Lordships' Court be pleased to excuse any delay (if any) in making this application while however, respectfully pleading that the said purported Statute being a nullity the question of delay shall not be applicable.

23. 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. Refer this matter to the Supreme Court under and in terms of the provisions of **Article 125 (1)** of the **Constitution** for an interpretation of '**item 37**' of the '**Provincial Council List**' and '**item 33**' of the '**Concurrent List**' read in the light of the provisions contained in **Article 3, 4(a), 75, 76 and 154G (1), (5), (8) (a) and (10)** and for a determination of the constitutionality of the impugned **North Western Province Environmental Statute No. 12 of 1990**;
- c. Grant and issue and order in the nature of a *writ of certiorari* quashing the purported **North Western Province Environmental Statute**;
- 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