

Environmental Foundation Limited v. The Attorney-General

S. C. Application No. 128/91; D/-11-12-1992

Supreme Court of Sri Lanka

G.P.S De Silva, C. J., K.M.M.B. Kulatunga J., P.Ramanathan J.

Application under Article 126 of Constitution-alleged infringement of fundamental rights under Articles 3, 11, 14(1) (g) and (h) read with Directive Principles of State Policy - blasting operations at quarry - damage to health and property and threat of serious injury to 2nd to 21st petitioners and other persons of the area-class action by 1st petitioner on behalf of unrepresented residents of the area - failure of 2nd to 5th respondents who were state officers and authorities to take action as empowered by law - settlement by mediation - times, frequency and strength of blasting to be regulated - appointment of Monitoring Committee.

The 2nd to 21st Petitioners were residents of the Nawimana and Weragampita villages in the South of Sri Lanka who claimed to be suffering serious injury to their physical and mental health and serious damage to their property and means of livelihood, as well as a constant threat to their safety as a result of large-scale blasting operations which had commenced in 1987 at a rock quarry close to their villages. The 1st Petitioner was a company limited by guarantee engaged in the protection of the environment through law and brought this section as a class action on behalf of all unrepresented residents of the area.

This quarry had been operated prior to 1987 by others without giving rise to complaint, but the Petitioners alleged that after the 6th Respondent (one Tilak Pathirana carrying on business as “The Southern Group”) took over the quarry in 1987 the frequency and the scale of the blasting had increased considerably and included simultaneous blasting of several bore holes. They stated that as a result, pieces of rock 20 centimetres in length were projected onto their villages which were 300 metres away, posing a serious danger to life and property. In addition they complained of unbearable noise both from the blasting and from a stone-crusher which operated at the same time, as well as severe vibrations and thick smoke caused by the explosions.

Among the specific incidents alleged by the Petitioners were the falling of piece of rock weighing about 2 kilograms onto the roof to the 15th petitioner’s house; respiratory problems caused to several Petitioners by the smoke; a miscarriage suffered by the 15th Petitioner which she attributed to the effects of the blasting; hearing problems due to the noise; children suffering from frequent headaches and dizziness as well as bad dreams; structural damage to the houses of the Petitioners caused by the vibrations; damage to the water table as a result of the deep bore holes dug by the quarry workers, causing the village wells to dry up; consequent inability to cultivate crops.

The Petitioners stated that despite their complaints the Government Agent, Matara, (2nd Respondent) had renewed the license for the quarry without giving the petitioners a hearing and had also failed to regulate the blasting in any meaningful way which he had jurisdiction to do. The Petitioners claimed that the 3rd Respondent (the Superintendent of Police, Matara) had failed to exercise his powers to abate a public nuisance despite the Petitioners’ complaints. The 4th Respondent (the Central Environmental Authority) was alleged to have failed to exercise its powers under the National Environmental Act No. 47 of 1980 as amended by At No. 56 of 1988 which provided for the licensing and regulation of the emission of pollutants into the environment. The operator of the quarry had not obtained a license from the CEA. The 5th Respondent (Director, Geological Survey Department) and the 7th Respondent (the Grama Sevaka of the area) were also alleged to have failed to take action which they were empowered to take under the law, despite repeated complaints from the Petitioners. The Petitioners claimed that the 6th Respondent, as the party who had benefited from the executive action or inaction of the other Respondents, should bear the financial cost of restoring to the Petitioners their physical quality of life.

The Petitioners claimed violation of their rights under the following provisions of the Constitution:

(1) Article 3: “.....sovereignty is in the people and is inalienable and includes fundamental rights”.

- (2) Article 11: “No person shall be subjected to torture or to cruel, inhuman or degrading treatment”.
- (3) Article 14(1) (g): “Every citizen is entitled to the freedom to engage in any lawful occupation “.
- (4) Article 14(1) (h): “Every citizen is entitled to the freedom of movement and of choosing his residence within Sri Lanka”.

Following the institution of this action, officials of the Central Environmental Authority (CEA) together with scientific experts visited the site of the quarry, watched the operations and measured the vibrations and noise levels from the blasting. Thereafter a series of meeting were convened by the CEA with representatives of all the parties to work out a scheme for the regulation of the quarry. On 11 December 1992 Counsel informed Court that a settlement had been reached, the terms of which would be filed in Court, and moved to withdraw the application. The Court accordingly dismissed the application without costs.

The **terms of settlement** filed in Court were as follows:

We, the above parties, beg to bring to Your Lordship’s notice that the parties to Supreme Court Application 128/91 have agreed to abide by the following conditions which have been laid down by the Chairman of the Central Environmental Authority in respect of the operation of the metal quarry at Nawimana. It is further agreed by the Petitioners that they will withdraw their application in view of the mediated settlement.

1. Number of blasting

- 1.1 Blasting to be conducted on 03 days of the week, namely, Monday, Wednesday and Friday.
- 1.2 However, in case there is a necessity to increase the number of blasting per week, i.e. exceeding the stipulated number of blasting at 1.1 above, approval of the Committee, mentioned at Item (11) below should be obtained.

2. Alternative Day for blasting

- 2.1 In the event the blasting could not be done on any one of the three days mentioned in 1.1 above, a blasting could be done on an alternative day, suitable to the 6th Respondent, during the same week or the following week, in consultation with the Committee, mentioned at Item (11) below.
- 2.2 However, 24 hours written notice of such intention should be given to the *Grama Niladharis*, who could put up written notices on the office notice boards.
- 2.3 Contingencies which could prevent a scheduled blasting will include bad weather, inability of the police to be present and such other like conditions beyond the control of the 6th Respondent.

3. Time for blasting

- 3.1 Blasting will be confined to the hours between 10.00 a.m. and 5.00 p.m. inclusive.

4. Time-space between blasting

- 4.1 There should be at least a time lapse of 20 seconds between each blasting. Simultaneous blasting is not permitted. Electronic detonators may be used with the approval of the Central Environmental Authority.

5. Depth of bore hole

- 5.1 The maximum depth of a bore hole should not exceed 8 feet.

6. Number of blasting per day

- 6.1 It is agreed not to stipulate the number of blasting per day.

7. Quantity and type of explosives

7.1 100 g dynamite and 300 g ammonium nitrate, provided however that the total quantity in any given bore hole should not exceed 350 g.

8. Method of blasting

8.1 Blasting will be done using the safety fuse method.

8.2 Use of Dyna-cord is subject to the approval of the Central Environmental Authority.

9. Report of the police officer

9.1 It is agreed that a monthly report containing the following information be maintained at the premises of the quarry by the 6th Respondent:

- (a) Total quantity of explosives used.
- (b) Depth of bore holes.
- (c) Dates on which blasting were carried out.
- (d) Commencement and close of blasting.
- (e) Method used for blasting.
- (f) Number of bore holes on each day.
- (g) Complaints by petitioners, if any.

9.2 Item (c) of the report should be certified by the manager of the site.

9.3 The entirety of the report should be certified by the police officer/s in attendance during the blasting operations.

9.4 The report will be made available for reference by the Government Agent of the district or his authorized officer, and the Central Environmental Authority.

10. Secondary blasting

- (a) Drilling will be manual or with the driller/compressor with a one inch drill (or equivalent in millimetres).
- (b) Depth of bore hole not to exceed three (03) feet.
- (c) Secondary blasting can continue only till 5.00 p.m. on the days of blasting.
- (d) Diameter of a bore hole should not exceed one (01) inch.

11. Monitoring Committee

11.1 It is agreed that a Committee consisting of the following members be appointed to monitor the blasting operations:

- (a) two (02) persons nominated from among the Petitioners and Intervening Petitioners nominated by the first Petitioner;
- (b) two (02) persons from Southern Group Ltd;
- (c) *Grama Niladhari* of the village of Nawimana;
- (d) *Grama Niladhari* of the village of Weragampita;
- (e) The Government Agent, Matara or an officer nominated by the Government Agent, Matara who shall be the Chairman of the Committee.

11.2 The Committee shall meet at least once in three (03) months.

11.3 The Committee shall decide on the procedure for the conduct of their business, subject to the terms and conditions given herein.

12. Operation of the crusher

12.1 A continuous wet process should be used for the crusher operation.

12.2 The CEA shall include a condition in the Environmental Protection License with respect to the construction of a sound barrier, within a time period of one (01) year.

13. Siren

13.1 The Siren should be sounded three (03) times before commencement and after completion of blasting operations.

14. Maximum noise and vibrations permissible

14.1 The following noise and vibration levels should be maintained at the perimeter of the quarry:

- (a) Maximum air blast over pressure level – 105 DB;
- (b) Ground vibration – Peak particle velocity below 5 mm/second; and
- (c) Sound level – 5 DB.

Signed on the 10th day of December 1992.
