

Right to be Free from Degradation of the Environment in Sri Lanka: A Review of *Chunnakam* Power Station Case

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Abstract

Ravindra Gunawardena Kariyawasam Vs. Central Environment Authority and Others (Chunnakam Power Station Case) is a landmark judgment in Sri Lankan judicial history, that defined the ‘Right to be Free from Degradation of the Environment’ as a Fundamental Right. This judgment emphasised the government’s duty to protect nature and conserve its riches as a national trust. Accordingly, the Chunnakam case is one of the significant judgments which underscored the ‘Public Trust Doctrine’ in Sri Lankan judicial history. Furthermore, in justifying this decision, the Supreme Court has adopted the ‘Precautionary Principle’, the ‘Polluter Pays Principle’, and the ‘Principles of Sustainable Development’.

Keywords: *Fundamental Rights, Polluter Pays Principle, Public Interest Litigation, Public Trust Doctrine*

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1. Background

Chunnakam is a densely populated agricultural area situated in the Jaffna peninsula.² Since 1958, a significant portion of the electric power requirements of the Jaffna peninsula was satisfied by the state-owned “Chunnakam Power Station (CPS)” operated by the Ceylon Electricity Board (CEB) (3rd Respondent of the Petition) which was situated in this area. During the civil war period, the power plant was vulnerable and electricity generation was reduced significantly.³ Therefore, during that period, two private power supply companies were established and operated another two thermal power stations in the Jaffna peninsula. However, the combined power output from these three thermal power stations was insufficient to meet the electricity consumption of the Jaffna peninsula.⁴ Therefore, the “Northern Power Company (Pvt) Ltd” (NPC) (8th Respondent of the Petition) was incorporated in 2007 to carry on the business of power generation and supply.⁵ The NPC constructed its thermal power station on land owned by CEB which was in very close proximity to the CEB’s existing Chunnakam Power Station. In 2012, after the end of war, the CEB decommissioned and replaced the ‘Chunnakam Power Plant’ with a new thermal power station named “Uthuru Janani”. All of these thermal power plants used heavy fuels/diesel to power their generators.

Dr Ravindra Gunawardena Kariyawasam, the Chairperson of the ‘Centre for Environment and Nature Studies’ (The Petitioner) filed a fundamental rights petition in the nature of public interest litigation before the Supreme Court, alleging *inter alia* that the “disposal of petroleum wastage” from the 8th respondent’s thermal power station has caused “massive environmental pollution” by the oil contamination of groundwater, wells and other water sources in the Chunnakam area, including the water intake well used by the National Water Supply and Drainage Board (NWSDB) (11th Respondent of the Petition).⁶ However, the respondents denied the allegations and further stated that adequate steps had been taken to prevent possible environmental pollution from the thermal power plant.⁷

² *Ravindra Kariyawasam Vs. Central Environment Authority*, (SCFR Application No. 141/2015), p.3.

³ *ibid*, p.4.

⁴ *ibid*, p.5.

⁵ *ibid*. p.5.

⁶ *ibid*, p.3.

⁷ *ibid*, p.4.

2. The issues that had to be decided

There were three main questions that the Supreme Court had to address concerning the existing issue.⁸ (a) whether wastewater and petroleum waste products discharged from the 8th respondent's thermal power station has caused oil contamination and pollution of groundwater and soil in the area? (b) whether the statutory authorities had failed to perform their statutory responsibilities? and (c) whether the respondents infringed fundamental rights of the residents of the Chunnakam area and the petitioner?

Since the 1st question was somewhat scientific, the Supreme Court focused on the scientific reports submitted by the petitioner and the respondents. In seeking answers to the 2nd and 3rd questions, the Supreme Court had to examine statutes, laws, regulations, and reports by expert bodies.⁹ After carefully considering all arguments from the petitioner and respondents, the Supreme Court finally held that the respondents have violated the fundamental rights guaranteed under Article 12 (1) of the Constitution of the residents of the Chunnakam area and the petitioner as a member of the public.¹⁰ Also, the 8th respondent was permitted to resume operating its thermal power station provided adequate measures are taken to ensure that doing so would not cause contamination or pollution of the surrounding environs, except as may be permitted by a duly issued Environmental Protection License (EPL).¹¹

⁸ Originally there were five questions before the court, that can be summarized into three main questions. (See pages 11 & 12 of the Judgment).

1. Whether the 1st to 7th respondents [or any of them] were required to obtain and consider an IEER or EIAR prior to the 8th respondent commencing the project to construct a thermal power station in 2007 or at some time thereafter during the operation of the thermal power station and, if so, whether the 1st to 7th respondents [or any of them] have failed to perform their statutory and regulatory duties in that regard ?

2. Whether the 8th respondent was prohibited by law from operating its thermal power station without the authority of an EPL and, if so, whether the 1st to 7th respondents [or any of them] have failed to perform their statutory and regulatory duties in that regard?

3. Whether wastewater and petroleum waste products discharged from the 8th respondent's thermal power station has caused oil contamination and pollution of groundwater and soil in the area ?

4. Whether such failure on the part of the 1st to 7th respondents [or any of them] to perform their statutory and regulatory duties in respect of the matters referred to in the aforesaid three issues has violated the fundamental rights guaranteed to the residents of the Chunnakam area and the petitioner by Article 12 (1) of the Constitution ?

5. Whether the continued operation of the 8th respondent's thermal power station will cause further oil contamination and pollution of groundwater and soil in the area ?

⁹ Dr Dinesha Samararatne, 'Chunnakam Power Plant case: Court recognises right to be free from 'degradation of the environment'' (Daily FT, 29 July 2019) <<https://www.ft.lk/columns/>> (Accessed on 20 October 2021).

¹⁰ Ravindra Kariyawasam, (n.1), p.61.

¹¹ *ibid.*

3. Expanding the Scope of Fundamental Rights in Sri Lanka

‘Public Trust Doctrine’ plays an important role in the Fundamental Rights Jurisdiction of Sri Lanka. In *Environmental Foundation Ltd Vs. Mahaweli Authority of Sri Lanka*¹² case, Justice Rathnayake observed that “[...] Although it is expressly declared in the Constitution that the Directive principles and fundamental duties do not confer or impose legal rights or obligations and they are not enforceable in any court or Tribunal. Courts have linked the Directive principles to the ‘Public Trust Doctrine’ and have stated that these principles should guide state officials in the exercise of their powers [...]”¹³ In the *Ravindra Gunawardena Kariyawasam Vs. Central Environment Authority and Others* (Chunnakam Power Station case),¹⁴ Justice Prasanna Jayawardene PC also adhered to this stance.

In the Chunnakam Power Station Case, the Supreme Court focused on Principle 16 of the Rio Declaration, which states “*National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.*”¹⁵ Accordingly, the Supreme Court applied the Polluter Pays principle and directed the 8th respondent (even though it was a private company) to pay compensation in the sum of Rs.20 million to offset at least a part of the substantial loss, harm and damage caused to the residents of the Chunnakam area by the contamination of groundwater in the Chunnakam area and soil.¹⁶ Although, according to the Constitution of Sri Lanka, only executive and administrative actions can be subjected to the fundamental rights jurisdiction of the Supreme Court,¹⁷ in the Chunnakam Power Station case, the Supreme Court relied on the Polluter Pays Principle in justifying its order of compensation against the power station which was a private entity. Accordingly, the judgment delivered in the Chunnakam Power Station case can be used to perceive how the scope of Fundamental Rights Jurisdiction has expanded in several aspects.

¹² 2010 1 Sri LR 1.

¹³ 2010 1 Sri LR 1 at p.19 cited in SCFR Application No. 141/2015, p.50.

¹⁴ *Ravindra Kariyawasam*, (n.1).

¹⁵ Principle 16 of the Rio Declaration on Environment and Development(1992).

¹⁶ *ibid*, p.64.

¹⁷ Article 17 of the Constitution of Sri Lanka states that, ‘Every person shall be entitled to apply to the Supreme Court, as provided by Article 126, in respect of the infringement or imminent infringement, by executive or administrative action, of a fundamental right to which I such person is entitled...’

4. Right to be Free from Degradation of the Environment

Although the Sri Lankan Constitution does not recognise specific environmental rights, the Supreme Court has recognised the responsibility of the state to protect the environment in several cases. In *Watte Gedera Wijebanda Vs. Conservator General of Forests and Others*¹⁸ Justice Tilakawardane stated that “[...] Article 27 (14) of the Constitution provides the directive principles of state policy that enjoins the state to protect, preserve and improve the environment. Article 28 refers to the fundamental duty upon every person in Sri Lanka to protect nature and conserve its riches [...]” In the Chunnakam Power Station Case, Justice Jayawardene also stated that, “[...] The directive principles of state policy are not wasted ink in the pages of the Constitution. They are a living set of guidelines which the state and its agencies should give effect to [...]”¹⁹

Justice Jayawardene further specified that “Article 12 (1) of the Constitution is read in the light of Article 27 (14) of the Constitution, which recognizes fundamental **right to be free from unlawful, arbitrary or unreasonable executive or administrative acts or omissions which cause or permit the causing of pollution or degradation of the environment.**”²⁰ Also, the Supreme Court remarked that access to clean water is a necessity of life and is inherent in Article 27 (2) (c) of the Constitution which declares that the state must ensure.²¹ Accordingly, the Supreme Court has been able to extend the scope of the Fundamental Rights Chapter to include specific environmental rights through equal rights.

¹⁸ 2009 1 Sri LR 337.

¹⁹ *Ravindra Kariyawasam*, (n.1), p.50.

²⁰ *ibid*, p.52.

²¹ *ibid*, p.53.

5. Conclusion

The Chunnakam Power Plant Case has developed the jurisprudence of Sri Lanka in three main aspects. (a) By clarifying the substantive aspects of environmental rights that are recognised in Sri Lankan jurisdiction; (b) by expanding the scope of the Supreme Court to grant remedies in the exercise of its 'just and equitable jurisdiction',²² and (c) by creating an effective direction for enforcing the 'Directive Principles of State Policy and Fundamental Duties' emphasised in the Constitution of Sri Lanka.

Accordingly, *Ravindra Gunawardena Kariyawasam Vs. Central Environment Authority and others* was an eye-opening judgment delivered by the Supreme Court on environmental protection in Sri Lanka. Through this landmark decision, the judiciary was able to expand the narrow avenue on environmental rights in Sri Lanka. Therefore, this judgment should be emphasized not as merely an ordinary case, but a beacon of light for the future.

6. References

Bulankulama Vs. Ministry of Industrial Development

(2000 3 Sri LR 243)

Environmental Foundation Ltd Vs. Mahaweli Authority of Sri Lanka

(2010 1 Sri LR 1)

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Samarathne, Dinesha., '*Chunnakam Power Plant case: Court recognises right to be free from 'degradation of the environment'*' (Daily FT, 29 July 2019)

²² Dr Dinesha Samarathne, (n.8).(Accessed on 20 October 2021).