

**Y.P.J. WARNAKULASURIYA**

**v.**

**CHANDANA SURIYABANDARA, DIRECTOR  
GENERAL, DEPARTMENT OF WILDLIFE  
CONSERVATION AND OTHERS**

CA/WRIT/120/2022

*(Pandu Karanda Tree Case)*

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**ABSTRACT**

This review analyses the Court of Appeal decision in *Y.P.J. Warnakulasuriya v. Chandana Suriyabandara, Director General, Department of Wildlife Conservation and Others*. The case revolved around the decision to uproot and relocate the ‘pandu karanda’ tree (*Crudia zeylanica*) to facilitate the construction of the Central Expressway between Kadawatha and Mirigama, while preserving the established right of way for the relevant portion of the expressway. Delivering its decision on 30<sup>th</sup> March 2022, the Court of Appeal of Sri Lanka held that there is no substantial basis for judicial review. The Court’s decision rests on the argument that the Petitioner has failed to successfully substantiate the claims made in the petition. In order to assess this legal pronouncement, this review adopts a black-letter method of research. The review concludes by arguing that the judgement effectively illustrates how judicial review can serve as a mechanism for evaluating decisions taken by administrative bodies that impact the environment and its resources. While the Court did not extensively invoke environmental principles in its decision, it did reference the principle of sustainable development and directive principles of state policy to emphasise the Court’s recognition of the need to balance environmental considerations with development initiatives.

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**KEYWORDS** – judicial review, construction of expressways, *pandu karanda* tree, directive principles of state policy

## 1. INTRODUCTION

The construction of expressways plays a pivotal role in advancing the economic objectives of a nation. However, unless constructed in a prudent and sustainable manner, such constructions can lead to various environmental calamities, including the loss of endemic fauna and flora.<sup>1</sup> Further, scholars emphasise the necessity of evaluating the social and environmental impacts before commencing the development of an expressway.<sup>2</sup> Consequently, when initiating such development activities, the relevant administrative authorities must adopt all essential measures to mitigate the adverse effects on the environment and its resources. Failure to do so may result in the persistence of man-made structures at the cost of invaluable resources.

The case of *Y.P.J. Warnakulasuriya v. Chandana Suriyabandara, Director General, Department of Wildlife Conservation* (hereinafter referred to as *Pandu Karanda Tree Case*) was decided against this backdrop. The decision clearly underscored the importance of safeguarding endangered fauna during the construction of expressways and examined the applicability of judicial review in scrutinising the legality of decisions made by authorities involved in construction and related activities.

## 2. THE LEGAL AND FACTUAL BACKGROUND

The case was filed in response to a decision to remove and relocate the '*pandu karanda*' tree to lay the path for the construction of the Central expressway between Kadawatha and Meerigama, without altering the right

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1 GIM Liyanage, 'Sri Lanka as hub of environment protection in Asia: constructing expressways while mitigating its environmental impact' (2013) Proceedings of the International Research Conference, General Sir John Kotelawala Defence University, 361-366.

2 HLPU Karunathilaka, KAK Devapriya and VG Shanika, 'Effect of social and environmental factors on expressway construction in Sri Lanka' (2021) Proceedings of the 9th World Construction Symposium University of Moratuwa, Sri Lanka <<http://dl.lib.uom.lk/handle/123/16591>> accessed 16 November 2023.

of way of the relevant section of the expressway. The Petitioner sought a writ of prohibition to restrain the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from executing the decision to remove the mentioned tree. Additionally, the Petitioner sought a writ of mandamus to prevent the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from removing the contested tree from its original location. The Petitioner argued that the actions of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are inconsistent with Articles 4(d), 27(2) and 28(f) of the Constitution of the Republic. Consequently, the Petitioner intended to utilise judicial review as an instrument to assess the legality of the actions undertaken by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

### **3. THE ORDER OF THE COURT**

On 30<sup>th</sup> May 2022, the Court handed down its ruling, dismissing the application of the Petitioner. Quoting Professor Johannes Chan of the University of Hong Kong, the Court highlighted that, ‘the criterion for granting permission is the potential for argumentation. This means determining whether the evidence presented to the trial judge reveals points that could, upon further examination, demonstrate an arguable case for the grant of the relief demand’<sup>3</sup>. Therefore, the Court declined to review the actions of the Respondents due to the Petitioner’s failure to substantiate their position in the case.

### **4. ANALYSIS**

Despite the dismissal of the petition, the *Pandu Karanda Tree Case* highlights the importance of assessing the environmental impacts during the construction of expressways and similar projects in Sri Lanka. Primarily, this case underscores the significance of judicial review in assessing the legality of decisions made by public authorities that could adversely affect the environment. The succeeding sections delve into the role of this decision in applying various legal and environmental principles.

#### **4.1. Judicial Review**

In the decision, the Court exercises its writ jurisdiction for judicial review under Article 140 of the Constitution, granting the Court of Appeal the

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3 Johannes Chan, ‘Application for Leave for Judicial Review: A Practical Note’ (1999) Law Lectures for Practitioners 167.

authority to issue orders akin to writs such as Certiorari and Mandamus.<sup>4</sup> Additionally in the case of *Public Interest Law Foundation v. Central Environmental Authority and another*,<sup>5</sup> Justice Gunawardena opined that, within judicial review, the Court of Appeal does not evaluate the merits of the case—whether the decision was right or wrong—but instead focuses on its lawfulness.<sup>6</sup> In certain cases, the judiciary has indicated that judicial review primarily focuses on the decision-making process.<sup>7</sup>

Scholars propose that judicial review can be regarded as an individual right to challenge the actions or decisions of public/governmental authorities.<sup>8</sup> It is crucial to underscore the utility of judicial review as a tool for challenging numerous governmental actions that have adverse effects on the environment and environmental resources. Although the claim in the *Pandu Karanda Tree Case* was unsuccessful, the Petitioner sought to employ this instrument in their pursuit of legal remedy.

## 4.2. Directive Principles of State Policy

In the *Pandu Karanda Tree Case*, the Petitioner underscored the significance of Articles 27(2) and 28(f) of the Constitution of Sri Lanka to delineate the responsibility of governmental officials in the execution of their decisions. Article 27(2) outlines a set of directive principles aimed at promoting the welfare, ensuring an adequate standard of living, providing sufficient food, clothing, and housing, fostering the development of the country, ensuring the equitable distribution of material resources, establishing a just social order, and elevating the morals and cultural standards of the people in the country. Consequently, under these principles, governmental officials are expected to exercise heightened vigilance when exercising their powers.

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4 *Y.P.J. Warnakulasuriya v. Chandana Suriyabandara, Director General, Department of Wildlife Conservation* (Hereinafter *Pandu Karanda Tree Case*), 3.

5 (2001) 3 Sri LR 330.

6 *ibid* 334.

7 *Chief Constable of North Wales Police v Evans* [1982] 1 WLR 1155 [Lord Brightman].

8 Alex Carroll, *Constitutional and Administrative law* (Pearson Education Limited 2009) 309.

Article 28(f) states that every person in Sri Lanka has a duty to protect nature and conserve its riches. Although these are integral for a stable and healthy society, Article 29 clarifies that these provisions are not enforceable in a Court of law. However, Justice Thilakawardene contended that, despite not being directly enforceable against the State, the Directive Principles of State Policy found in Article 27(4) of the Constitution offer crucial direction and guidance to various State organs in the enactment of laws and the performance of good governance duties.<sup>9</sup> Recognizing these directive principles of state policy and fundamental duties in good faith indeed enhances the quality and legality of the decisions made by governmental officers.

### 4.3. Sustainable Development

In the present case, Justice Rajakaruna, emphasised the significance of the principle of sustainable development. While various definitions exist for sustainable development, the definition proposed by the Report of the World Commission on Environment and Development, also known as the Brundtland Commission Report, stands as one of the most comprehensive and widely recognized definitions. This report describes sustainable development as, ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.<sup>10</sup>

By expanding the landscape of sustainable development, scholars have identified four elements of sustainable development: the principle of intergenerational equity, the principle of sustainable use, the principle of intra-generational equity, and the principle of integration.<sup>11</sup> These elements are interconnected and interdependent for the full realisation of the concept of sustainable development. Scholars further highlight that sustainable development encompasses not only environmental and

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9 *Watte Gedera Wijebanda v Conservator General of Forests and Others* (2009) 1 Sri LR 337, 338.

10 World Commission on Environment and Development, “Our Common Future” (1987) United Nations <<https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>> accessed on 16 November 2023.

11 Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (CUP 2018) 218-228.

development aspects, but also incorporates social, political, and economic dimensions.<sup>12</sup> Therefore, comprehending the multifaceted nature of sustainable development is crucial in devising more environmentally friendly and holistic solutions.

## 5. CONCLUSION

Although the judiciary in the *Pandu Karanda Tree Case* ultimately dismissed the Petitioner's application based on the submitted facts, it has effectively presented a compelling argument for the use of judicial review in evaluating government actions related to the environment. Despite certain reservations about the decision, the discourse surrounding judicial review, directive principles of state policy, and sustainable development remain pivotal. This case discussion notably underscores the importance of preserving rare plant species and emphasizes the responsibility of governmental officers in their actions concerning such rare environmental resources.

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12 *ibid.*

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