

THE CONSTITUTIONAL RECOGNITION OF THE RIGHT TO CLEAN ENVIRONMENT UNDER 1978 CONSTITUTION OF SRI LANKA: A REVIEW WITH REFERENCE TO CHUNNAKKAM POWER PLANT CASE

P.K. Manawa Nanayakkara*

Introduction

“The right to a healthful and clean environment has been regarded as a vital aspect of the right to life, for without a healthy and clean environment it would not be possible to sustain an acceptable quality of life even life itself”(Hashim,2013)

The above statement testifies the vital link between life and the environment. Human life is heavily depended on the sustainability of the environment. Therefore, the right to clean environment has been recognized as one of the main aspects in the human rights context. Some countries have provided an explicit reference to the right to clean environment in their constitutions while other countries have recognized this right through the judicial interpretation of the existing constitutional provisions like equality before law and right to life. The Constitution of the Democratic Socialist Republic of Sri Lanka (hereafter referred to as 1978 Constitution), does not accept the right to clean environment as a fundamental right unless some environmental protection appears as an obligation under directive principles of State policy(Chapter 6 of the 1978

Constitution). However, in the *RavindraGunawardene Kariyawasam Vs. Central Environment Authority & 10 others* (hereafter referred to as Chunnakam Case) case, Justice Prasanna Jayewardene pointed out that there can be implied constitutional acceptance to the right to clean environment by reading Article 12(1) of the 1978 Constitution and obligations relating to environment protection under directive principles of the State Policy simultaneously. This research examines firstly, what is the concept of the right to clean environment followed by why we need to accept it as a constitutional right. Secondly, this research focusses on examining how the Supreme Court has interpreted and recognized right to clean environment as a constitutional right under Article 12(1) and the directive principle in the 1978 Constitution. Finally, this research makes recommendations on how to provide constitutional recognition to the right to the environment under the Sri Lankan constitution.

Methodology

This research is normative in nature and is based on a literature review. Furthermore, primary and secondary

* Apprenticeship Year, Sri Lanka Law College

sources are used to conduct this research. The 1978 Constitution of Sri Lanka, 1949 Constitution of India (hereafter referred to as Indian Constitution) and case law has been used as primary sources in conducting this research. Besides journal articles, books and policy papers have been used as secondary sources to enhance the outcome of this research.

Results and Discussions

What is Right to Clean Environment?

Right to clean environment associated with the rights of an individual to grow physically, mentally and intellectually to be completed humankind (Hashim, 2013). The Principle 1 of the Stockholm Declaration on the Human Environment in 1972 (hereafter referred to as Stockholm Declaration) refers to the obligation of humankind in protecting environment by following words, “ *Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing and he bears a solemn responsibility to protect and improve the environment for present and future generation.*” Furthermore, Principle 2 of the Stockholm Declaration stresses that “*the natural resources of the earth, including the air-water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management as appropriate.*” The

Stockholm Declaration recalls the duty of humankind to protect the environment for the betterment of present and future generations emphasizing the importance of recognizing the right to clean environment substantially in the constitutions or other laws.

The Declaration on United Nations Conference on Environment and the Development (hereafter referred to as the Rio Declaration) is also playing a vital role in the international arena to uphold and recognized the right to clean environment as one of the fundamental concerns of every human being on the globe. Principle 1 of the Rio Declaration highlights “*Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.*” Simultaneously, it provides an obligation on the States to protect the environment as a universal heritage.

As a part of the universal family, we are also required to follow and adhere to the guaranty of the right to clean environment recognized in this universal declaration to achieve sustainable development and to preserve the environment for our present and future generation. In this context, the right to clean environment is interwoven together with some other principles of environmental protection such as intergenerational equity, the concept of guardianship and importantly, the concept of public trust. Therefore, it is clear that the right to clean environment based on a combination of universally

accepted environmental principles and provides a comprehensive concept. The Indian judiciary has upheld the concept of the right to life as a fundamental in *Chameli Singh v. State of Uttar Pradesh* case highlighting that “*right to live guaranteed in any civilized society implied the right to food, water, decent environment, education, medical care, and shelter. These are basic human rights known by any civilized society*”. This decision itself provide an account to consider the right to clean environment as a part of the right to life and human rights.

The Sri Lankan Constitution does not expressly recognize either right to clean environment or right to life under fundamental rights. However, there is some judicial interpretation which recognizes the right to clean environment as a fundamental right. In the case of *Ahangama Vithanage Deshan Harindra & four others v. Ceylon Electricity Board*, the petitioner took an attempt to established right to clean environment as a fundamental right by high lighting that " ...although there is no express right to life or right to clean environment in Chapter 3 of the Constitution, this right is so fundamental that without it all other rights would be meaningless, and therefore it is necessarily recognized under chapters 3 and 4 of the constitution." The Chunnakam case reflects the recent most example of recognizing the right to clean environment under fundamental rights by providing long-lasting vision towards environmental protection.

Background of the Chunnakam Case

Chunnakam is a town situated in Jaffna peninsula in the northern part of Sri Lanka. This area is crowded, and it is a hive of commercial and agricultural activity. The petitioner (Ravindra Gunawardene Kariyawasam, Chairman, Centre for Environment and Nature Studies) of this case made public interest litigation against a Thermal Power Station in the Chunnakam area and due to the impact of this operation is polluting groundwater in the area. In this petition, the petitioner/s further pointed out that Central Environment Authority (1st respondent), Ceylon Electricity Board (3rd Respondent) and Board of Investment (10th Respondent) were failed to enforce the law against the Northern Power company (Pvt) Limited (8th Respondent) and having failed to stop the 8th Respondent polluting groundwater and having failed in their duty to act in the best interests of the public. In addition, the petitioner stated that, thereby, the respondents had violated the fundamental rights guaranteed to the petitioner and the residents of the Chunnakam area by Articles 12(1) of the 1978 constitution.

The respondents have refused the alleged violations and stressed that the electricity services in the Jaffna peninsula had been disrupted during the war and therefore they allowed the 8th Respondent to start thermal power station in Jaffna. They further pointed out that soon after the war ended, respondents have taken adequate measures to protect the environment.

Accordingly, the Supreme Court had to decide whether the omission of the Respondents in failing to perform their statutory and regulatory duties in issuing Initial Environmental Examination Report (hereafter referred to as IEER) and Environmental Impact Assessment Report (hereafter referred to as EIAR) and therefore, violates the fundamental rights guaranteed to the residents of the area and the petitioner under the Article 12(1) of the Constitution.

Legal Reasoning of the Court

The Supreme Court assessed the relevant statutory and regulatory provisions to solve the pertaining issues of this case. Consequently, the Supreme Court scrutinized the ways and means of issuing IEER and EIAR under the sections of the National Environment Act no 47 of 1980 (as amended) (hereafter referred to as N.E. Act) to determine whether there was an omission in the part of statutory bodies in granting the license to the 8th Respondent to operate the power plant. The Central Environment Authority is established under the Act described above with the powers, functions, and duties of making recommendations relating to national environmental policy and the conservation of natural resources and engaging in related research, educational and advisory activities.

The Court went on stating that, *"This is particularly so since, in an application of this nature, which has the favour of public interest litigation and which raises important issues regarding the right of a section of the citizens of this country.*

Therefore Section 57 of the Evidence Ordinance, and Section 32 and 23A of this the N.E. Act amply entitle this Court to take orders and regulations into consideration when determining this application." The considerations of statutory authority were used to justify the 'executive and administrative nature' of the Central Environment Authority (hereafter referred to as CEA) and Board of Investment (hereafter referred to as BOI) of Sri Lanka in allowing the 8th Respondent to operate the power plant in the Chunnakkam area. Therefore, as statutory bodies, these respondents were required to act and perform powers, duties, and functions in the interest of people by respecting the fundamental rights and freedoms guaranteed in the Constitution.

The Court pointed out that the BOI as a "Project approving agency", is primarily responsible for the failure to ensure the 8th Respondent submitted an IEER or EIAR and obtained approval under the Part 4 C of the N.E. Act. Same time The Central Environment Authority is also failed to perform their duty as per the pertaining law, and it must also bear the responsibility for the failure to ensure that the 8th Respondent obtained the requisite approval before the implementation of the project to add to the power generation capacity of its thermal power station. Accordingly, the Supreme Court has stressed that the duty and legislative responsibilities relate to BOI and both statutory authorities have neglected CEA and, such omissions have directly linked to violating the rights of petitioners and

the people living in Chunnakkam area under the Article 12(1) of the Constitution.

Interestingly, the directive principles of the State Policy provided in the Section 27 of the 1978 constitution have been interpreted by the Court in a pragmatic way by mentioning, "the *CEA and BOI* which are agencies of the State are to be guided by these directive principles as fundamental duties when carrying out their statutory and regulatory duties." Apart from that, the Court has mentioned that the Directive Principles of State policy 'are not wasted ink in the pages of the constitution' and should be given due consideration as substantive aspects of the in interpreting the Constitution. The Article 27(14) under the directive principles points out that "State policy is that the state and its agencies shall protect, preserve and improve the environment for the benefit of the community" The Supreme Court linked this with the Article 12(1) of the Constitution and pointed out that both sections together recognizes right to clean environment as a fundamental right. Justice Prasanna Jayewardene has quoted the well-known judgment of *Wattegedra Wijebanda vs. Conservator General of Forest* and pointed out that "while environmental rights are not specifically alluded to under the fundamental rights chapter of the constitution, the right to clean environment and the principle of intergenerational equity with respect to the protection and preservation of the environment are inherent in meaningful

reading of article 12(1) of the constitution".

Furthermore, the Supreme Court went on analyzing that, the Environmental Principles to upgrade the right to a clean environment. The Court mainly discusses the importance of Sustainable development, Precautionary principle and Public Trust doctrine to describe the responsibilities of executive or administrative bodies act or omission regarding environmental concerns.

Therefore, it is amply clear that Article 12(1) of the Constitution read in the light of Article 27(14) of the Constitution provides that the people of Sri Lanka has a fundamental right of right to clean environment and all the state and regulatory authorities are required to protect, respect and upheld this right in a proper manner. The Chunnakkam case provides a far-reaching vision on the recognition of the right to clean environment under the 1978 Constitution of Sri Lanka.

Implied recognition of the right to clean environment

As discussed earlier, a healthy and clean environment is vital to human life because it helps a person to grow physically, mentally and intellectually. Hence, a country needs to provide constitutional recognition to the right to clean environment through explicit terms.

India provides a classic example to prove the constitutional recognition of the right to clean environment, whereas it has

explicit provisions regarding right to clean environment in the Constitution. The Indian constitutional framework regarding the right to a clean and healthy environment is described under its fundamental rights Chapter. Article 48 (a) of the Indian Constitution provides that “the state shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.” Moreover, Article 51A (g) of the Indian Constitution provides an obligation “to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures.” Furthermore, Article 21 provides that ‘no person shall be deprived of his life or personal liberty except according to the procedure established by law’ which can also be linked with the right to clean environment.

The concept of the right to clean environment has been upheld in the Indian Supreme Court decisions to accomplish the environmental principles as well as human dignity. In *T.N. Godavarman Thirumulpad (87) v. Union of India case*, the Court decided that natural resources are the asset of the nation and hence, the government has to conserve and prevent wastage of the resources. Furthermore, the Court went on stating that, if there were any danger made to the ecology, such danger would result in the infringement of the fundamental right to a healthy and clean environment protected under Articles 48, 51 and 21 of the Constitution. Moreover, in *MC Mehta v. Union of India* case, the

Indian Supreme Court, has decided that the right to a living atmosphere amiable to human existence is part of the right to life under Article 21 of the Constitution. The explicit reference to this right will provide a certainty and well recognized to the right to clean environment and support the judiciary for in the process of interpreting such rights.

Recommendations

As discussed through this paper, our court system is utilized existing constitutional provisions to uphold the right to clean environment, but there is a question on the adequacy of having only an implied reference in the Constitution and lack of certainty. We have a recent experience that the importing of clinical waste to Sri Lanka from developed countries to dump here which is directly impacts on the country’s environment and to degrade the people’s right to clean environment. The Chunnakkam case provides a direction to policymakers and society that the people's right to clean environment should be given a priority. As we are in a constitutional reforming process, it can be suggested that this is the high time to consider adopting right to clean environment as a fundamental right in our Constitution to provide constitutional recognition, better protection and assurance to clean environment.

References

- The Constitution of the Democratic Socialist Republic of Sri Lanka (1978)
- The Constitution of India (1949)
- National Environment Act no 47 of 1980
- Stockholm Declaration on the Human Environment (1972)
The way forward. *Asia Pacific International Conference on Environment-Behaviour Studies*, (2013), 204-210.
Retrieved July 29, 2019
- *Ahangama Vithanage Deshan Harindra & four others v. Ceylon Electricity Board*, FR 323 (1997).
- *Chameli Singh v. State of Uttar Pradesh*, 2 549 (1996)
- *MC Mehta v. Union of India*, 1 AIR 4256 (2005)
- *Ravindra Gunawardene Kariyawasam Vs. Central Environment Authority & 10 others*, 115 (2015).
- *T.N. Godavarman Thirumulpad (87) v. Union of India*, 1 AIR 4256 (2005)
- *Wattegedra Wijebanda vs. Conservator General of Forest*, 1 SLR 356 (2009)
- Hashim, N. B. (2013). Constitutional Recognition of Right to Healthy Environment: