

NANDASIRI  
V.  
G. M. S. de SILVA  
CHAIRMAN, U. C. AMBALANGODA & ANOTHER

SUPREME COURT  
SENEVIRATNE J. FERNANDO J & AMERASINGHE J.  
S.C. APPLICATION NO. 161 OF 1987.  
OCTOBER 17, 1987.

*Fundamental Rights — Infringement of Fundamental Rights under Article 12 (1), 12 (2) and 14 (1)(g) of the Constitution — Disconnection of electricity supply.*

The petitioner's supply of electricity used by him to run a chillie grinding mill was disconnected by the 1st respondent Chairman of the Urban Council of Ambalangoda on the ground that the running of such a mill caused pollution, noise, nuisance and was a health hazard. No licence was granted to run the mill.

**Held**

(1) The fact that the electricity is being used to produce an improper result is not relevant. The disconnection was unlawful but to attract relief under Article 12 (1) it must also be established that those in like circumstances are being unequally treated. It was not established that the other business referred to by the petitioner like manure factory, printing press, casting types, electric tape factory and cinnamon processing factory were in fact similar. No violation of Article 12 (2) has been established as 1st respondent's conduct has not been proved to have been motivated by political animosity.

(2) Licensing requirements in regard to offensive or dangerous trades or which are likely to create a nuisance are clearly justifiable under Article 15 (7) in the interests of public health, securing the rights of others, and the just requirements of the general welfare of society. In the absence of a licence, the petitioner's occupation or business was not "lawful" and his complaint is not within the scope of Article 14 (1) (g).

(3) In making an application under Article 126 the petitioner has misconceived his remedy.

**Cases referred to :—**

1. *Negombo M.C. v. Fernando* — 63 NLR 512
2. *M.C. Badulla v. Ratnayake* — [1978-79] 2 SRI LR 141.
3. *David v. Abdul Cader* 77 NLR 18.
4. *Corea v. U.C. Kotte* — 62 NLR 253.

Application complaining of infringement of Fundamental Rights.

*C.V. Vivekanandan with S. Perimpanyagam, K. Packialingam and Miss K. Rajanathan for Petitioner.*

*D.S. Wijesinghe with Miss S. Nandadasa for the 1st Respondent.*

*Cur. adv. vult.*

December 2, 1988

**FERNANDO, J.**

This application is in respect of the alleged infringement of the Petitioner's fundamental rights, under Articles 12 (1), 12 (2) and 14 (1) (g), by the 1st Respondent, the Chairman of the Urban Council of Ambalangoda, who directed the disconnection of the supply of electricity to premises No. 370, Main Street, Ambalangoda, where the Petitioner was carrying on the business of a grinding mill. The Petitioner's case is that (a) others carrying on like businesses were not similarly treated, (b) he was discriminated against on account of political opinion, and (c) his right to engage in a lawful business was violated.

In October 1986, the Petitioner took these premises on lease, and applied to the Council for a 3-phase supply of electricity for business purposes, specified as a grinding mill. Some residents petitioned against the business of grinding chillies being carried on in these premises; this was referred for inquiry to certain officials, who reported that the Petitioner had not obtained a licence to carry on this business in these premises, that the area was a mixed residential area, that approval should not be granted for such business, and that before a supply of electricity was given, these matters should be brought to the notice of the Electrical Superintendent. The Petitioner obtained a letter of consent from several residents, but not from his immediate neighbours on either side. By letter dated 29.11.86, the 1st Respondent informed the Petitioner of the refusal of permission for the proposed grinding mill.

The Petitioner pursued his efforts to obtain permission for the grinding mill. In March 1987, the Urban Development Authority (U.D.A.) requested the 1st Respondent to consider the grant of permission subject to such conditions as to the hours of business, and the prevention of pollution and noise, as may be recommended by the Central Environmental Authority (C.E.A.). Having inspected the proposed grinding mill, that Authority recommended conditions as to an exhaust ventilation system, a chimney taller than the neighbouring buildings, the maximum noise level, and working hours. The 1st Respondent nevertheless did not permit the grinding of chillies. By letter dated 9.4.87, the Petitioner complained to the U.D.A. that, while the Council was taking steps to give the electricity supply, permission for the grinding of chillies had been refused; he requested the U.D.A. to advise the Council to grant such permission. On or about 12.4.87 the electricity supply was given, and the Petitioner was permitted to carry on, and did commence, the business of a grinding mill; the 1st Respondent states that the grinding of chillies was expressly excluded. No formal licence was issued. Up to this time, the relationship between the Petitioner and the 1st Respondent was cordial.

While these facts are undisputed, the contents of a document dated 9.4.87 are hotly disputed. The Petitioner says that he handed to the 1st Respondent some blank papers, signed by him, to be used for the purpose of obtaining the licence. The 1st Respondent denies this, asserting that this document was tendered by the Petitioner in connection with the electricity supply, which had not yet been given on 9.4.87; this contains conditions, specified by the Petitioner, which are substantially the same as those specified by the C.E.A. shortly before, as well as a condition excluding the grinding of chillies. The signature being admitted, it was for the Petitioner to prove that the document was signed in blank (and perhaps also that the 1st Respondent had no implied authority to insert whatever now appears therein). His letter dated 9.4.87 to the U.D.A. and the fact that he was given the electricity supply and permission to run the grinding mill within a few days makes it probable that the contents of this document were not inserted after it was signed. I think it more likely that, six months having already elapsed, he

reluctantly agreed to a condition excluding the grinding of chillies ; but nevertheless persisted in his efforts to get the U.D.A. to advise the Council to grant such permission.

Later the relationship deteriorated. The 1st Respondent had been elected to the Urban Council as a candidate of the United National Party, of which the Petitioner was an active supporter. Early in June 1987, the 1st Respondent tendered his nomination for the Urban Council elections, as a nominee of an Independent Group, and was thereupon expelled from the U.N.P. Thereafter, says the Petitioner, steps were taken to cripple his business. During this period, the Petitioner was grinding chillies at his grinding mill ; permission having been refused on 9.4.87, there is nothing to suggest that any such permission was thereafter given; despite a request by the U.D.A. by letter dated 20.4.87 to consider granting such permission. Complaints were made by Major Ranjit Vithana, the Petitioner's immediate neighbour, in regard to pollution, noise and injury to health. Acting on these complaints, the 1st Respondent warned the Petitioner not to grind chillies, and the Police instituted proceedings (still pending) in the Magistrate's Court, where too he was similarly warned. The C.E.A. by letter dated 24.9.87 informed the U.D.A. that upon an inspection of the premises it was found that chillies were being ground, causing air and noise pollution, as well as being a nuisance to residents in the vicinity. On 14.10.87, the 1st Respondent directed the disconnection of the Petitioner's electricity supply, although, he avers, long before that date he had ceased to grind chillies.

We are called upon to decide whether the disconnection of the Petitioner's electricity supply was unlawful, and in violation of Articles 12 (1), 12 (2) and 14 (1) (g).

It was conceded that the 1st Respondent could exercise the rights and powers of the Urban Council in regard to the grant and disconnection of a supply of electricity. It was submitted for the Petitioner that there was no statutory provision or contractual right of disconnection in the circumstances of this case. The application for supply was for business purposes, and there was no right to exclude a particular business ; any condition

purporting to exclude the grinding of chillies, was therefore ultra vires ; and hence disconnection on that ground was unlawful. He relied on *Negombo M.C. v. Fernando* (1), where H.N.G. Fernando, J., held that there cannot be imposed on a contract for the supply of electricity terms and conditions which are not authorised expressly, by the Electricity Act or the regulations made thereunder. Counsel for the 1st Respondent did not seek to contend that the impugned condition was " authorised ". This decision was followed in *M.C. Badulla v. Ratnayake* (2) : there the business of milling paddy was an " offensive or dangerous trade " which could be carried on with a licence from the Council ; however, under a zoning scheme this business was totally prohibited in buildings in residential areas. The plaintiff applied for a supply of electricity for such a business in a residential area ; notwithstanding the zoning scheme the Council decided to give the supply, accepted payment and commenced work. Later the Council refused to give the supply, on the basis that it was not legally able to grant a licence for that business and that no useful purpose would be served by supplying electricity. Vythialingam, J., held that the purpose for which the supply was required was irrelevant : if the plaintiff carried on a prohibited business, he would be liable to prosecution and punishment, and " this has nothing to do with the Electricity Act ". However, the plaintiff at the relevant time knew nothing about the zoning scheme and the legal prohibitions, and his evidence, that if such business was not possible, he would have used the premises for some other permissible business, was accepted. In those circumstances, it was held that the refusal to give the supply of electricity was wrongful, and the plaintiff was held entitled to damages.

If a supply of electricity is given for a purpose which becomes illegal, because of statutory provisions or the failure to obtain a necessary licence, it may well be contended that the contractual obligation is discharged by supervening illegality, despite the absence of statutory or contractual conditions entitling the supplier to *disconnect* the supply. This question was not expressly decided in the cases cited, nor did Counsel for the 1st Respondent submit that principle was applicable to the present case, and I therefore do not express any opinion thereon ; for it

may also involve other issues, e.g. whether the 1st Respondent's failure to grant a licence was wrongful. I have therefore to proceed on the assumption that the disconnection was unlawful, as the condition relied on was not "authorised", however laudable the 1st Respondent's motives (of preventing pollution and nuisance) might have been.

Counsel for the 1st Respondent fell back on a condition contained in terms and conditions said to have been annexed to the original application, authorising the disconnection of the supply of any consumer who uses or applies electrical energy in an improper manner so as to obstruct any other consumer or the efficient supply of electricity; he submitted that subjecting *residents* in the vicinity to environmental pollution and causing a nuisance amounted to such obstruction. This condition relates to obstruction to other "*consumers*", and for that reason alone a violation has not been established. More important, it refers to the improper manner in which electrical energy, *qua* energy, is used, and not to an improper result produced by a proper use of electricity. Thus electricity may be used properly (complying with technical requirements regarding voltage, amperage, quality of wiring, earthing, etc.) in a printing press; if the press is used at some point of time to print defamatory or seditious matter, it is the press, and not electricity, that is then being used in an improper manner. This submission also fails, and it is unnecessary to consider the submission in reply, that no such document was ever signed by the Petitioner and that a copy thereof was not even served on him in these proceedings.

The Petitioner's allegation that others were carrying on businesses of a similar nature at Main Street was denied; the instances cited were "manure factory, printing press, casting types, electric tape factory and cinnamon processing factory", and the 1st Respondent's rejoinder was that no adverse reports or complaints had been received in respect of these. Article 12 applies where those in like circumstances are unequally treated; the material before us is totally inadequate to establish that the other businesses were in fact similar. We do not know whether they were causing comparable pollution and nuisance, whether adequate precautions were taken, whether they were duly

licensed, and whether they had been carried on before new environmental standards came to be recognised. If the disconnection is unlawful, it would entitle the Petitioner to a legal remedy, but it would not amount to a violation of Article 12 (1) unless both factors — like circumstances, and unequal treatment — are established. In regard to the allegation that the 1st Respondent was motivated by political animosity, there is no doubt that the 1st Respondent's conduct from October 1986 was consistent: he was motivated by other factors, relating to environmental pollution and nuisance. The delay in the supply of electricity and the refusal of a licence, up to April 1987, were therefore not attributable to political bias, for differences of political opinion occurred only in June 1987; and there was no significant change of attitude by the 1st Respondent thereafter. No violation of Article 12 (2) has been established.

Counsel also submitted that the Petitioner's right to engage in a lawful occupation or business has been infringed. This right is not absolute, but is subject to restrictions in terms of Articles 15 (5) and 15 (7). It is common ground that a licence was required for the business in question, and had not been obtained; there was no suggestion that the requirement of a licence was unconstitutional. Licensing requirements in regard to offensive or dangerous trades, or which are likely to create a nuisance, are clearly justifiable under Article 15 (7) in the interests of public health, securing the rights of others, and the just requirements of the general welfare of society. In the absence of a licence, the Petitioner's occupation or business was not "lawful", and thus not within the scope of Article 14 (1) (g). The Petitioner's right to carry on that business elsewhere was not proved to have been affected, but I express no opinion on the question whether for that reason too a violation of the Article 14 (1) (g) has not been established.

The decisions cited (1), (2) indicate that the nature of the remedies available for the wrongful disconnection of an electricity supply are clear (see also *David v. Abdul Cader* (3) and

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*Corea v. U.C. Kotte* (4). In making this application under Article 126 the Petitioner has misconceived his remedy. In the circumstances, I dismiss the Petitioner's application with costs fixed in a sum of Rs. 750.

**Seneviratne, J.**, — I agree.

**Amerasinghe, J.**, — I agree.

*Application dismissed.*

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