

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

SC (FR) 431/2005

In the matter of an Application under Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Kandage Gamini de Silva
264, Bandaranayake Mawatha,
Katubedda, Moratuwa.

PETITIONER

Vs.

1. Nishan de Silva
Officer in Charge
Police Station
Piliyandala.
2. Manjula
Police Constable (38356)
Police Station,
Kohuwela.
3. P. S. Rajakaruna
4. K. M. Smarakoon Banda

3rd & 4th Respondents both of
Special Investigations Branch
Ceylon Electricity Board
540, Colombo.
5. U. M. C. Alahakoon
Regional Engineer, CEB Depot,
76/1, Attidiya Road,
Rathmalana.

6. P. Nishantha Priyankara
Assistant Superintendent
CEB Depot
Kesbewa.
7. Ceylon Electricity Board
No. 50, Sir Chittampalam A. Gardiner
Mawatha, Colombo 2.
8. Nalaka Udayanga Senanayaka
“Dimuth”,
Iddagoda, Mathugama.
9. Ruhunu Wickramarachchi
Manager Investigations,
Ceylon Electricity Board
No. 50, Sir Chittampalam A. Gardiner
Mawatha, Colombo 2.
10. Hon. Attorney General
Attorney-General’s Department,
Colombo 12.

RESPONDENTS

BEFORE: Sisira J. de. Abrew J.
Anil Gooneratne J. &
Vijith K. Malalgoda P.C., J

COUNSEL: J.C. Weliamuna P.C. with Shantha Jayawardena
And Senura Abeywardena for the Petitioner

S. Herath S.S.C. for the 1st - 7th, 9th and 10th Respondents

8th Respondent is absent and unrepresented.

ARGUED ON: 30.08.2017

DECIDED ON: 27.09.2017

GOONERATNE J.

This is a Fundamental Rights Application pertaining to an electricity meter which had been tampered. (alleged to be tampered by the Petitioner).

The Petitioner's main complaint is that he was arrested by the police on false information. He also states that the Electricity Board officials (Respondents) falsely implicated and made very incorrect observations to merely put him in trouble. Petitioner also plead that the 8th Respondent closely associates the officers of the Piliyandala Police. Petitioner plead that the 9th Respondent had instigated the impugned arrest of the Petitioner, by making false complaints, and the arbitrary arrest of him by 1st to 9th Respondents. Supreme Court on 14.03.2012 granted leave to proceed for alleged violation of Article 12(1), 13(1) & 13(2) of the Constitution.

The material placed before court gives some indication that on 12.02.2005 the 5th Respondent converted the domestic connection to a commercial connection. The Respondent also takes up the position that the Electricity Board had no knowledge about the transfer of title of the hotel or the subsequent lease (paragraph 15 of the 3rd Respondent's affidavit).

Petitioner purchased by deed No. 1840 of 02.08.1999 premises in question where the disputed electric meter had been installed. The previous owner was one Mrs. S. Atygalle. Electricity supplied to his house by the CEB which bears No. 2194869514 (P6, P7) Petitioner also purchased the adjacent land by deed of transfer of May 2000. (A smaller house having an electricity meter bearing No. 2191577113 (P8 & P9)). In the petition it is pleaded that some renovations were done, and the small house later demolished and request was made to the Kesbewa branch of the CEB for

(1) Connection under A/c No. 2194869527

(2) Connection under A/c No. 2191577121

Permission obtained as per paragraph 11 of his petition. On or about 11.04.2003 Petitioner leased out one of the premises he constructed after demolition of the small house, to the 8th Respondent for three year. It was as described in the petition, for a holiday resort. By P11 lease agreement and Clause 13 of the lease agreement was entered between them to pay electricity and other utility bills by 8th Respondent. Thereafter at some point of time he came to know that the 8th Respondent handed over the keys through his employee and went away. It was on 07.08.2004, and gave the impression that 8th Respondent would return by 10.08.2004 to settle dues (P14 and paragraph 15) of petitioner. Electricity Supply and telephone connection (paragraph 17) had been disconnected and

the Petitioner complained immediately to the police. (P15) Petitioner pleads that 8th Respondent had been involved in fraudulent activities (paragraph 18). Complainant made promptly. Petitioner's Attorney by P24 sent a letter of demand to the 8th Respondent and from that point onwards Petitioner started his holiday business in the premises (November 2004). Petitioner discovered an electricity shortage from his 2nd connection in or about January 2005. Petitioner then informed the Kesbewa unit of CEB about it, over the telephone. It is also stated that the Petitioner inquired from one 'Nelka' who was an employee of 8th Respondent as to what took place earlier, and the said employee divulged that two of 8th Respondent's friends 'Gamini' and 'Priyantha' had on a particular day come to the premises in question and later came with another unknown person. They were meddling with the electricity meter. The Petitioner having learnt about this once again complained to the Piliyandala Police that the seals had been tampered with by 8th Respondent (P25 & P26). On the same day Petitioner handed over a written complaint to 6th Respondent on 12.02.2005. (P27 & P27A).

No action seems to have been taken by the authorities concerned, on Petitioner's complaints. As such the Petitioner inquired from the 6th Respondent who told him that Petitioner's complaint had been handed over to the 5th Respondent. By P28A of 28.02.2005 Petitioner was informed to deposit

Rs. 850/- each for the connection of meters (P28B). This request was made by the Petitioner some time ago, as stated in this judgment. Having paid so after correction and connection of meter the Petitioner was required to pay Rs. 57,484/- (P29 & P30). There is also material to the effect that on or about 25.07.2005 Petitioner sold the said hotel (P31).

In the submission of learned President's Counsel for Petitioner it was submitted inter alia that whilst the Petitioner was in the Hotel (Holiday Resort) on 26.09.2005, the 2nd to 4th Respondents and another police officer came to the Hotel (Holiday Resort) and the Petitioner inquired about their presence and was informed that they came to investigate the complaint made to the police. I would at this point, instead of making this judgment to prolix itemise the relevant facts:

- (a) On 26.09.2005 electricity meter and second connection removed by the said Respondents and Petitioner was directed to accompany them to the police (Piliyandala) at 10.30 a.m.
- (b) No finger prints obtained
- (c) No valid reason disclosed at that point of time.
- (d) Petitioner told the Respondents that meter is in his name
- (e) As such Petitioner to be questioned and was arrested .
- (f) Statement of Petitioner recorded.
- (g) No valid reasons for the arrest
- (h) 3rd Respondent states meter is in the name of the Petitioner

- (i) Bills in the name of the Petitioner
- (j) 3rd Respondent the 1st complainant.
- (k) 1st and 3rd Respondent engaged in a discussion till 3.00 p.m.in the police
- (l) Action to be taken against, the Person in whose name the electricity connection was provided.
- (m) Petitioner inquires as to what action was taken regarding his complaint of 12.02.2005 to the police. 3rd Respondent is unaware. Petitioner requests the 1st Respondent to inquire into his complaint.
- (n) At 2.00 p.m police brought Priyantha to the station. He admits that a former employee of the CEB was in the hotel with them.
- (o) It was one 'Nimal', former CEB employee - petitioner disclaim responsibility. Nor was Petitioner produced before Magistrate as required by law. Petitioner suffers from gastritis.

The learned Senior State Counsel on behalf of 1st to 7th and 9th Respondents in her submissions maintained the position that the meter was in the name of the Petitioner and inter alia referred to Section 67 (c) of the Ceylon Electricity Act, and that there was no violation by the Respondents. Petitioner has not changed the tariff system to commercial and continued under the domestic tariff. It was submitted that the Petitioner continued with the original agreement with the CEB. Learned counsel submitted that it was an illegal connection and implicated the Petitioner.

Documents 3R1 and 5R2 were highlighted by State Counsel and that police detained the Petitioner for less than 24 hours. 3R1 is dated 09.02.2005. 3R2 is the notice of irregular use of electricity, an internal document.

The affidavit of the 1st Respondent in paragraph 10 of same reveals the following:

- (a) On 26th September 2005 around 13.30 hrs., on the direction of the Deputy Inspector General of Police a team comprising of the 2nd Respondent, PC 33053 Pushpakumara and officers of the Ceylon Electricity Board arrested the Petitioner and produced him at the Piliyandala Police Station.
- (b) He was arrested on the allegation that he pilfered Electricity by tampering with the Electricity meter. (The notes of the 2nd Respondent relating to the arrest is marked as 1R2 and pleaded part and parcel hereof).
- (c) Answering further I state that the Petitioner was arrested at 12.20 noon and handed over to the police. I deny that he was handed over to the police around 10.30 a.m.
- (d) I state further that the arrest had taken place lawfully and after having duly read the charge to the petitioner.

This court having considered the version of each party is more than satisfied that the Petitioner's fundamental rights are breached. The story of the Petitioner is more convincing than the Respondents. It is regrettable that the official Respondents conducted their usual business in the most unacceptable manner. It is no excuse for the police to state that the Petitioner was detained until the report of the CEB was forthcoming to the police. Is it the position that the police in this instant was unaware of the provisions of the Criminal

Procedure Code? Until the arrival of Petitioner's Attorney, at the police, kept the Petitioner in police custody? Why was that? The Respondents who held office in the CEB cannot take cover under the law and take pride for their acts done to the Petitioner. The law should never be flouted to such an extent. Though such unacceptable acts took place some years ago, I wonder whether the CEB has made an attempt to rectify their mistakes, thereafter. Consumers request should take precedent, and it should never be ignored or delayed. A Government Agency should serve the people, for which it was established by statute, and should not attempt to harm the consumer based on unacceptable proof.

Respondents rely on Section 67c. of the Electricity Act. It reads thus:

67 Whoever -

67c. (1) Where any person is convicted of any offence under section 65, section 66 or section 67, the Magistrate's Court shall, in addition to any penalty which it is required to impose under this Act, impose on such person a fine in a sum of money being the value of the loss or damage caused to the licensee as a result of the act or default constituting such offence and any sum recovered as such additional fine shall be paid to the licensee on application made to Court by such licensee.

(2) Where two or more persons are convicted of having committed the same offence whether as principal or abettor, the value of such damage or loss may be apportioned among such persons and the amount so apportioned shall be imposed on each of such persons as a fine.

(3) A certificate issued by the licensee shall be received as proof of the value of such loss or damage in the absence of evidence to the contrary'

shall be guilty of an offence punishable with a fine not exceeding five hundred rupees, and, in the case of a continuing offence, with a daily fine not exceeding twenty-five rupees.

There are so many aspects for the Respondents to establish in the above section. A high standard of proof is required to bring the Petitioner within the above section. One cannot in a haphazard way rely on the said section and bring the Petitioner within the said section in circumstances where material is placed by the Petitioner that others were involved. Due notice served by court on 8th Respondent, but 8th Respondent was absent and unrepresented. Officials of CEB and police should have done a proper investigation to bring the culprits to book. One cannot proceed to implicate, and police could not have arrested the Petitioner in the absence of cogent reasons and evidence. To interfere with any persons liberty without a valid cause is a greater violation. Court need to protect the Petitioner when violation of fundamental rights are apparent. Petitioner complained to the CEB promptly about the tampering of the meter and the consumption of electricity by 8th Respondent illegally. He also made a police complaint. There was no immediate response to either, of them by the authorities concerned. It is regrettable the way a consumer of Electricity was treated by CEB.

I find that the law does not merely penalise the person in whose name the electricity was provided. There is no strict liability attached to a consumer under the statute. The consumer could be held responsible only in a case where he is held liable for tampering with a meter, and only with sufficient proof of that fact. On a perusal of the Magistrate Court proceedings I find that the Petitioner was acquitted. This fact of course need to be only considered by this court but it would certainly add to his reputation to prove innocence. Arrest of a person could be done only according to procedure established by law. "The role of court should be to expand the reach and ambit of fundamental rights rather than attenuate their meaning and content by a process of judicial construction". Menaka Gandhi Vs. India AIR 1978 SC 597 at 691-692.

I am also inclined to hold that the Petitioner was not produced before the Magistrate within the time required by law. These are basic rights available to a citizen, as per Article 13 of the Constitution. Considering all the above matters, I hold that the Petitioner's fundamental rights guaranteed by Article 12(1), 13(1) and 13(2) of the Constitution have been violated by 1st and 7th Respondents.

In all the above circumstances I hold that the Petitioner is entitled for relief in terms of sub paragraph 'b' and 'd' of the prayer to the petition. 7th Respondent (CEB) is directed to pay as compensation a sum of Rs. 1 million to

the Petitioner. 1st Respondent is also directed to pay a sum of Rs. 100,000/- as compensation.

Application allowed with costs.

JUDGE OF THE SUPREME COURT

Sisira J. de Abrew J.

I agree.

JUDGE OF THE SUPREME COURT

Vijith K. Malalgoda P.C., J.

I agree.

JUDGE OF THE SUPREME COURT