

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

*In the matter of an application under and in terms
of Article 17 and 126 of the Constitution of the
Democratic Socialist Republic of Sri Lanka in
respect of the violation and/or the continuing
violation of **Articles 12(1) and 14(1) (g)** of the
Constitution of the Democratic Socialist Republic of
Sri Lanka*

1. Hon. Sajith Premadasa MP
Leader of the Opposition
Leader- Samagi Jana Balawegaya
No. 815,
E. W. W Perera Mawatha,
Ethul Kotte

Petitioner

Vs

1. Public Utilities Commission of Sri Lanka
6th Floor BOC Merchant Tower
No. 28, St Michael's Road,
Colombo 03
2. Ceylon Electricity Board- Head Office
6th Floor,
Sir Chittampalam A. Gardiner Mawatha
Colombo 02
3. Hon. Kanchana Wijesekara
Minister of Power and Energy
Ministry of Power of Energy
No. 80, Sir Ernest De Silva Mawatha,
Colombo 07
4. M P D U K Mapa Pathirana
Secretary to the Minister of Power and
Energy

Ministry of Power Energy
No. 80, Sir Ernest De Silva Mawatha,
Colombo 07

5. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

On this 8th day of January 2024.

TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS AND LADYSHIPS
THE OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

The Petition of the Petitioner above named appearing by Shayamali Athukorala his registered Attorney-at-law states as follows.

- 1) The Petitioner is a citizen of Sri Lanka and the Leader of the Opposition in the Ninth-Parliament of the Democratic Socialist Republic of Sri Lanka.
- 2) The Petitioner states that;
 - a. The 1st Respondent is a Commission established under the Public Utilities Commission of Sri Lanka Act, No. 35 of 2022 and is the economic, technical and safety regulator of the Electricity Industry in Sri Lanka, which is a body corporate with perpetual succession that maybe sued under its name, in terms of section 02 of the said Act.
 - b. The 2nd Respondent is a body Corporate with perpetual succession that maybe sued under its name in terms of section 02 of the Ceylon Electricity Board Act No. 17 of 1969 (as amended).
 - c. The 3rd Respondent is the incumbent Minister of Power and Energy.
 - d. The 4th Respondent is the Secretary to the 3rd Respondent.
 - e. The 5th Respondent is the Hon. Attorney General and is made a party to this application in terms of Article 134(1) of the Constitution.

- 3) The Petitioner states that,

- i. The actions and/or omissions of one or more of the Respondents as morefully set-out hereinafter are executive and administrative action within the meaning of Articles 17 and 126 of the Constitution for the purposes of the instant application,
- ii. by virtue of their office as Members of Parliament, it is incumbent on the Petitioner to respect, secure and advance the freedoms and the fundamental rights of the citizens guaranteed under the Constitution,
- iii. in these circumstances, the Petitioner has filed the instant Petition canvassing the infringement of fundamental rights on his behalf and that of the general populace and/or a class of the general populace and/or the citizenry of Sri Lanka owing to the actions and/or omissions of the several Respondents.

THE BACKGROUND TO THE STATUS QUO

- 4) The Petitioner states that since the past several years, Sri Lanka has plunged into the worst economic crisis since independence as a result of decades of mismanagement, lack of implementation of Government policies and political instability.
- 5) The Petitioner states consequent to the COVID-19 pandemic, the emergence of the economic crisis presented multiple challenges including but not limited to
 - a) severe threats to nutrition, food security, healthcare, and education affecting a vast number of families, children and the elderly,
 - b) irreparable losses affecting continuity to small and medium scale business and the livelihoods of vast number of individuals.
- 6) The Petitioner further states that as the economy continued to plummet, businesses were forced to shut down while education and operation of entities were hindered due to persistent power cuts. The shortage of fuel, food and medicine resulted in the loss of public trust, paving way for a civil unrest in 2022.
- 7) The Petitioner states, lest one forget, that one such crisis was the electricity crisis, where sporadic power cuts even extending to 13-hours a day were experienced in the country in 2022.
- 8) In these circumstances, the Petitioner states that the electricity sector has a fundamental bearing on all facets of life involving the economy, health, education, national security, etc.

- 9) However, presently, the country has seen an unprecedented increase in costs of energy and electricity, one that the average Sri Lankan finds hard to meet in the aforesaid background and the Petitioner have come to learn that the said increase in costs of Electricity are a result of a series of malicious and/or unlawful and/or negligent actions by the authorities so concerned.

PARLIAMENT SECTORAL OVERSIGHT COMMITTEE ON ALLEVIATING THE IMPACT OF THE ECONOMIC CRISIS

- 10) The Petitioner states that as a result of the raging economic crisis, a Parliamentary Sectoral Oversight Committee on Alleviating the Impact of the Economic Crisis was appointed (hereinafter morefully described as “the Committee”).
- 11) The Petitioner states that Sectoral Oversight Committees under and in terms of **Standing Orders No. 111** of the Democratic Socialist Republic of Sri Lanka have the power to, *inter alia*, examine any Bill, Treaty, Reports including the Annual and Performance Reports relating to the institutions coming under its purview or any other matter referred to the Committee by Parliament or any Committee or a Minister relating to the subjects and functions within their jurisdiction.
- 12) The Petitioner states that that Sectoral Oversight Committees shall have general oversight responsibilities in order to assist Parliament in –
- a) Its analysis, appraisal and evaluation of the application, administration, execution and effectiveness of existing government policies;
 - b) Its activities for future research and forecasting for the formulation of alternative policies;
 - c) Its analysis, appraisal and evaluation of the application, administration, execution and effectiveness of legislation passed by Parliament and condition and circumstances that may indicate the necessity or desirability of enacting any new or additional legislation; and
 - d) Its formulation, consideration and enactment or changes in any law and of such additional legislation as may be necessary or appropriate.
- 13) The Petitioner states that as more specifically envisaged under **Sections 4 and 9** under Standing Order No. 111, the said Committee is empowered to, *inter alia*,
- i. “to examine any Bill, any subsidiary legislation including regulation, resolution, treaty, report or any other matter relating to subjects within their jurisdiction”,

- ii. Adopt an oversight plan and in developing the said plan “*review specific problems with government rules, regulations and statutes which need further consideration or that impose severe financial burdens on individuals*”.

THE STATUS QUO

- 14) The Petitioner states that on or around the 2nd of January 2024, the Parliament Sectoral Oversight Committee Office in a letter to the Chairman of the 1st Respondent Commission, set out, *inter alia*, the observations, suggestions and recommendations of the Parliament of Sri Lanka Sectoral Oversight Committee on alleviating the impact of the economic crisis.

A true copy of the said letter is attached herewith Marked as “P1” pleaded part and parcel hereof.

- 15) The Petitioner observes that the said letter sets out the observations made by the said Committee on the electricity sector based on the several discussions and/or documents submitted by several entities including the 1st, 2nd, 3rd and 4th Respondents themselves.

- 16) At the outset, the Petitioner states that,

- a) the document marked **P1** hereto reveals an observation made by the said Committee that there has been an incorrect estimation of hydropower generation, incorrect calculation of coal and thermal generation, faulty forecasts of electricity demand, inefficiencies in the coordination between institutions resulting in the 1st Respondent Commission making a faulty decision in increasing electricity tariff in October 2023,

- b) it is having placed reliance on this and other observations of the Committee that the Petitioner is now before Your Lordships’ Court.

- 17) The Petitioner states that the Committee in exercising its lawful mandate, have identified and highlighted, *inter alia*, from amidst its plethora of reasons contributing to the present Electricity Crisis,

- A. Decades of mismanagement, inefficient administration, failure to implement long-term strategic plans (*as morefully depicted in Paragraph 1 of the document marked **P1** hereto*),

- B. Corruption, conflict amongst 2nd Respondent and the industry in itself (*as morefully depicted in Paragraph 1 of the document marked P1 hereto*),
 - C. The failure of the relevant authorities, including the 1st Respondent to focus on relying on the use of renewable energy sources that the country is abundantly possessed with (*as morefully depicted in Paragraph 2 of the document marked P1 hereto*),
 - D. The failure of the relevant authorities to attempt to meet sustainable development goals whilst focusing on the development of power into an exportable commodity which would generate foreign exchange (*as morefully depicted in Paragraph 3 of the document marked P1 hereto*),
 - E. The lack of understanding on the part of authorities, including the several relevant Respondents, of the importance of energy security and the role it plays in upholding National Security and the detrimental effects of consumer dependency of electricity on foreign supply (*as morefully depicted in Paragraph 4 of the document marked P1 hereto*),
- 18) The Petitioner states that including the aforesaid observations, the Committee has proceeded to unambiguously highlight the manner in which the aforesaid actions and/or omissions of the relevant authorities including the several respondents would go on to affect the citizenry, vis-à-vis, the infringement of fundamental rights of the average Sri Lankan.

THE VIOLATION OF THE FUNDAMENTAL RIGHTS GUARANTEED UNDER ARTICLE 14(1)(g) OF THE CONSTITUTION

- 19) The Petitioner states that every citizen, under and in terms of Article 14(1)(g) is entitled to the freedom to engage by himself or in association with others in any lawful occupation, business, trade or enterprise.
- 20) However, the Petitioner states the Committee in the said letter marked P1 hereto, sets out that
- a) Businesses and enterprises that suffered owing to the economic crisis are now in further turmoil in sustaining themselves given the increase in electricity costs (*as morefully depicted in Paragraph 1 of Page 2 of the document marked P1 hereto*),

- b) persistent mismanagement has resulted in the increase in the new electricity costs forcing small, medium and large scale producers and manufacturing industries to downsize their production and/or the threat of complete shut down due to the inability to pay such increased electricity tariff *(as morefully depicted in Paragraph 2 of Page 2 of the document marked P1 hereto)*,
- c) as a result of the increase in electricity costs, export-oriented manufacturing industries are currently focusing on investing and conducting business overseas resulting in the loss of foreign exchange, further imposing a risk of collapse of domestic small-scale industries due to the shortage of imported raw materials and in turn would result in a loss of employment *(as morefully depicted in Paragraphs 3 &4 of Page 2 of the document marked P1 hereto)*.

21) The Petitioner states that in these circumstances,

- a) the malicious and/or unlawful and/or negligent imposition of increased electricity costs depriving the aforesaid classes of the population engaged in commerce of the ability to sustain their businesses and enterprises is an infringement of Article 14(1)(g) of the Constitution,
- b) the simultaneous failure of the relevant authorities and Respondents to manage the energy sector and/or improve upon the same as morefully set-out in the document marked P1 hereto, resulting in the above is a violation of the 'Doctrine of Public Trust'.

22) The Petitioner states that the Committee has further elaborated that through the contraction of the small and medium-scale industry which contributes to approximately 50% of the Gross National Product and approximately 52% of private sector employment, there could be an undue pressure in the unemployed social stratum, both socially and politically.

THE VIOLATION OF THE FUNDAMENTAL RIGHTS GUARANTEED UNDER ARTICLE 12(1) OF THE CONSTITUTION

23) The Petitioner states that every citizen, under and in terms of Article 12(1) are equal before the law and entitled to equal protection of the law.

24) The Petitioner states that,

- a) the Committee has presently revealed that **at least 800,000 electricity connections have been disconnected over the past three quarters** due to the

public being unable to pay irrationally high-priced electricity costs and tariffs (as morefully depicted in Paragraph 8 of Page 2 of the document marked **P1** hereto),

- b) the committee also elaborates how such power cuts could immensely hinder children's education and would severely affect the nutrition intake of children due to a series of contributory factors (as morefully depicted in Paragraph 8 of Page 2 of the document marked **P1** hereto).

25) The Petitioner states that further to the aforesaid observations,

- i. the Committee has indicated that the authorities including the Respondents have failed to provide any analytical information to the Committee justifying the need to increase electricity tariff despite the request made by the Committee for the same.
- ii. the request submitted by the 2nd Respondent to the 1st Respondent Commission to obtain necessary approval for electricity tariff revision was approved by the 1st Respondent despite the contradictions in the material submitted for such approval.

26) The Petitioner states that in these circumstances, the relevant authorities including the several Respondents have acted and/or arrived at certain decisions and/or approved certain decisions,

- a) In a manner disregarding the process and/or factors that would justify an unprecedented increase in electricity costs,
- b) In a manner disregarding the plight of the average Sri Lankan,
- c) In a manner disregarding the plight of the general populace that is struggling to overcome the repercussions of the economic crisis,
- d) In a manner that does not guarantee the equal protection of the law to class of people undergoing economic hardship.

27) The Petitioner states that this observation is further confirmed by the Committee that has identified that,

- a. there has been an incorrect estimation of hydropower generation, incorrect calculation of coal and thermal generation, faulty forecasts of electricity demand,

inefficiencies in the coordination between institutions resulting in the 1st Respondent Commission making **a faulty decision in increasing electricity tariff in October 2023** (as morefully depicted in Paragraph 10 of Page 3 of the document marked P1 hereto), and

- b. that whilst the estimated hydropower generation for the said year was 3750 Gwh, the actual generation by the end of the year was 4510 Gwh. But, with electricity demand also dropping by about 400 Gwh, and the in-operation of Coal Plants **the 2nd Respondent has generated a profit of over 26 Billion Rupees** (as morefully depicted in Paragraph 11 of Page 3 of the document marked P1 hereto),
- c. Further, due to the increase in electricity tariff by 18%, the 2nd Respondent generated a profit of approximately Rs 26 Billion, **resulting in the 2nd Respondent generating a total profit of about 52 Billion Rupees** (as morefully depicted in Paragraph 11 of Page 3 of the document marked P1 hereto).

28) The Petitioner states that it is undeniable that the several Respondents including the 2nd Respondent has made 52 Billion Rupees at the expense of the frail, Sri Lankan taxpayer, and have acted in a manner infringing the Fundamental Rights of the public.

29) The Petitioner states that in these circumstances,

- a) the malicious and/or unlawful and/or negligent imposition of increased electricity costs depriving the general populace while profiting over the Billions is an infringement of Article 12(1) of the Constitution,
- b) the simultaneous failure of the relevant authorities and Respondents to manage the energy sector and/or improve upon the same as morefully set-out in the document marked P1 hereto, resulting in the above is a violation of the 'Doctrine of Public Trust'.

30) The Petitioner further draws Your Lordships' attention to the fact that in observation of the aforesaid malpractices on the part of the 1st and 2nd Respondents, the Committee has made several recommendations, *inter alia*, that

- a) the 1st Respondent Commission to issue an order to the 2nd Respondent to reduce electricity tariff within 3 months beginning January 2024, in a manner in which the disproportionate profit obtained by the 2nd Respondent could be passed onto the public,

- b) 1st Respondent to introduce a reasonable electricity price mechanism to cater to families faced with extreme poverty and to formulate a pricing mechanism that would safeguard the interests of industries.
- 31) The Petitioner states it is unequivocally clear that the Respondents have individually and/or collectively violated the Fundamental Rights of the Petitioner and of the entire citizens of this Republic, duly guaranteed by Articles 12(1) and 14 (1)(g) of the Constitution.
- 32) The Petitioner states that the entire process adopted by the Respondents in amending and increasing electricity costs lack transparency and further, have effectively and calculatedly deprived the Petitioner and the general citizenry, in whom the sovereignty is reposed in terms of entrenched Article 03 of the Constitution which read with Article 04 of the Constitution, from debating and reaching an informed decision.
- 33) The Petitioner states that the entire process adopted by the Respondents is a patent breach of the public trust reposed on them to act only in the best interest of the public.
- 34) The Petitioner further states that the Petitioner has not previously invoked the jurisdiction of Your Lordship's Court in respect of this matter.
- 35) The Petitioner further respectfully reserves the right to add parties and/or furnish additional pleadings and/or documents in support of the Petitioner's application should it become necessary.

WHEREFORE, the Petitioner respectfully prays that Your Lordship's Court grant,

- a) A declaration that the 1st and/or 2nd and/or 3rd and/or 4th Respondents have infringed the fundamental rights of the Petitioner and/or the Citizens of the Democratic Socialist Republic of Sri Lanka guaranteed under Article 12(1) of the Constitution;
- b) A declaration that the 1st and/or 2nd and/or 3rd and/or 4th Respondents have infringed the fundamental rights of the Petitioner and/or the Citizens of the Democratic Socialist Republic of Sri Lanka guaranteed under Article 14(1)(g) of the Constitution;
- c) An order directing the 1st and/or 2nd and/or 3rd and/or 4th Respondents to furnish all documentation tendered to and/or before the Parliamentary Oversight Committee which precipitated the letter dated 02nd of January 2024, marked 'P1' hereto;
- d) An order directing the 2nd Respondent to set aside and pay 52 Billion Rupees and/or

any excess profits acquired during the period morefully depicted in Paragraph 11 of page 3 of the document marked P1 hereto unto an interest bearing account to be distributed amongst the parties affected by the undue increase in electricity costs as morefully set-out in the document marked **P1** hereto and/or disburse the same;

- e) An order directing the 1st and/or 2nd and/or 3rd and/or 4th Respondents to reduce the prices of electricity costs and/or tariffs;
- f) An interim order directing the 2nd Respondent to earmark and deposit 52 Billion Rupees and/or any excess profits acquired during the period morefully depicted in Paragraph 11 of page 3 of the document marked P1 hereto in an interest bearing account to be distributed amongst the parties affected by the undue increase in electricity costs as morefully set-out in the document marked **P1** hereto and/or disburse the same;
- g) An interim order directing the 1st and/or 2nd and/or 3rd and/or 4th Respondents to reduce the prices of electricity costs and/or tariffs;
- h) Costs;
- i) Such other and further costs Your Lordships' Court shall seem meet.

Registered Attorney-at-Law for the Petitioner

Settled by:

Jessica Abeyratne, Esq.

Vinura Kularatne, Esq.

Farman Cassim, Presidents Counsel