

PETITION

**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 read with Article 126 of the Constitution
of the Democratic Socialist Republic of Sri Lanka.

Public Utilities Commission of Sri Lanka,
6th Floor, BOC Merchant Tower,
St. Michael's Road,
Colombo 03.

PETITIONER

SC/FR Application No.

Vs.

1. Hon. Basil R Rajapakse,
Minister of Finance,
Ministry of Finance, The Secretariat,
Colombo 01
2. S. R. Attygalle
Secretary, Ministry of Finance,
The Secretariat,
Colombo 01
3. Hon. Pavithra Wanniarachchi,
Minister Power,
Ministry of Power,
No.137, Galle Road,
Colombo 03.
4. Wasantha Perera,
Secretary, Ministry of Power,
No.137, Galle Road,
Colombo 03.
5. Hon. Gamini Lokuge,
Minister of Energy
Ministry of Energy,
No.80, Sir Earnest De Silva Mawatha,
Colombo 07.
6. K. D. R. Olga,
Secretary, Ministry of Energy,
No.80, Sir Earnest De Silva Mawatha,
Colombo 07.
7. Monetary Board of Sri Lanka,
No.30, Janadhipathi Mawatha,
Colombo 01.
8. Ajith Nivard Cabral,
Governor of the Central Bank and Chairman of the
Monetary Board,
Central Bank of Sri Lanka,
No.30, Janadhipathi Mawatha,
Colombo 01.

9. Ceylon Electricity Board,
No.50, Sir Chittampalam A Gardiner Mawatha,
Colombo 02.
10. General Manager,
Ceylon Electricity Board,
No.50, Sir Chittampalam A Gardiner Mawatha,
Colombo 02.
11. Ceylon Petroleum Corporation
69, Dr. Dannister De Silva Mw.,
Colombo 9.
12. Honourable Attorney General,
Attorney General's Department,
Colombo 11.

RESPONDENTS

TO:

**HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS THE OTHER
HONOURABLE JUSTICES OF THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

On this 1st day of April 2022,

The **Petition** of the **Petitioner** above named appearing by **Mr. G. G. Arulpragasam**, its Attorney-at-Law, states as follows:

1. The Petitioner is the Public Utilities Commission of Sri Lanka (hereinafter referred to as the "**PUCSL**") which is a body corporate established under Section 2 of Public Utilities Commission of Sri Lanka Act No. 35 of 2002 (hereinafter referred to as the "**PUCSL Act**") with the capacity to sue or be sued in its corporate name.
2. The Petitioner states that:
 - (a) The 1st Respondent is the Minister of Finance and a member of the Cabinet of Ministers charged with the direction and control of the Government of the Democratic Socialist Republic of Sri Lanka in terms of the Constitution;
 - (b) The 2nd Respondent is the Secretary to the Ministry of Finance and the Secretary to the Treasury;
 - (c) The 3rd Respondent is the Minister of Power and a member of the Cabinet of Ministers charged with the direction and control of the Government of the Democratic Socialist Republic of Sri Lanka in terms of the Constitution;
 - (d) The 4th Respondent is the Secretary to the Ministry of Power;
 - (e) The 5th Respondent is the Minister of Energy and a member of the Cabinet of Ministers charged with the direction and control of the Government of the Democratic Socialist Republic of Sri Lanka in terms of the Constitution.
 - (f) The 6th Respondent is the Secretary to the Ministry of Energy.
 - (g) The 7th Respondent is the Monetary Board of the Central Bank of Sri Lanka, which is a body corporate established under the Monetary Law Act No. 58 of 1949, which may sue or be sued in its corporate name;

- (h) The 8th Respondent is the Governor of the Central Bank and Chairman of the Monetary Board;
 - (i) The 9th Respondent is the Ceylon Electricity Board (hereinafter referred to as “CEB”), which is a body corporate established under the Ceylon Electricity Board Act No. 17 of 1969, with its registered place of business at the address as given above, which may sue or be sued in its corporate name;
 - (j) The 10th Respondent is the General manager of the CEB;
 - (k) The 11th Respondent is the Ceylon Petroleum Corporation (hereinafter referred to as “CEYPETCO”), which is a body corporate established under the Ceylon Petroleum Corporation Act No. 28 of 1961 (as amended) with its registered place of business at the address as given above, which may sue or be sued in its corporate name;
 - (l) The 12th Respondent is the Hon. Attorney General who is made a party to this application in terms of Supreme Court Rules of 1990 read with Article 134(1) of the Constitution.
3. The Petitioner states that electricity is critical for the life of the Sri Lankan community and the supply of electricity is regulated under the Sri Lanka Electricity Act No. 20 of 2009 (as amended) (hereinafter referred to as “SLEA”). According to Section 3 of the SLEA power is conferred on the Petitioner as the economic, technical and safety regulator of the electricity industry, and as such, the generation, transmission and distribution of electricity can only be done under and in terms of a licence issued by the Petitioner.
 4. The Petitioner states that the Ceylon Electricity Board (CEB) is licensed to generate, transmit and distribute electricity. The Petitioner states that the CEB operates the national grid and holds a monopoly in electricity transmission. The powers, duties and functions of the CEB are described in the Ceylon Electricity Board Act No. 17 of 1969 and in the licenses issued by the Petitioner under the SLEA.
 5. The Petitioner states that the authority, responsibility and the mandate to regulate the electricity industry, in terms of the SLEA, is vested in or assigned to the Petitioner as a multi-sectoral regulatory authority under the PUCSL Act. The Petitioner further states that its regulatory powers, functions and duties are to be carried out in terms of both the SLEA and the PUCSL Act.
 6. The Petitioner states that in terms of the SLEA, the Petitioner is statutorily required, *inter alia* to;
 - (a) Advise the Government on all matters concerning the generation, transmission, distribution, supply and use of electricity;
 - (b) Protect the interest of consumers in relation to the supply of electricity by promoting efficiency, economy and safety; and
 - (c) to secure all demands for electricity in Sri Lanka are met.
 7. The Petitioner states that in addition to the above, in terms of Section 14 of the PUCSL Act, the Commission is mandated to *inter alia*;
 - (a) Protect the interest of all consumers;
 - (b) Promote efficiency in operation and capital investment; and
 - (c) Ensure financing of public utilities industries.

8. The Petitioner states that the supply of electricity as envisaged under the SLEA is fundamental to ensure that Citizens' welfare and enjoyment of their basic economic and social rights. The Petitioner further states that disruption to the supply of electricity would have a direct impact on the Citizens achieving and enjoying many of their fundamental rights, including the fundamental rights contained in the Constitution.
9. The Petitioner states that the failure to ensure the supply of electricity as mandated under the SLEA will infringe upon the Citizens' enjoyment of their fundamental rights guaranteed under the Constitution.
10. The Petitioner states that as described hereinafter, the acts and/or omissions of the 1st – 11th Respondents have resulted in a situation by which the supply of electricity as per the SLEA has become impossible to provide, resulting in a continuous violation of the fundamental rights of the Citizens. The said acts and/or omissions of the aforementioned Respondents have also resulted in the Petitioner being unable to effectively discharge and fulfill its statutory functions, duties and obligations in terms of the law, and as such, the Petitioner is advised to state that a cause of action has accrued to the Petitioner to invoke the fundamental rights jurisdiction of Your Lordships' Court under Article 126 of the Constitution on its behalf and in the public interest.
11. The Petitioner states that from on or about end December 2021, a situation arose by which an uninterrupted supply of electricity could not be provided necessitating load shedding (supply interruptions). The principle causes for this are both long term and immediate. The long-term causes include the failure on the part of the 9th Respondent CEB and relevant government authorities to take such action as was considered necessary and recommended by the PUCSL to avert a possible energy crisis. The immediate causes are the rising cost of fuel, weak financial position of the CEB and insufficient availability of fuel. The insufficiency of foreign exchange for the purposes of purchasing the necessary fuel to operate generation plants that are not dependent on hydro-based sources is one of the key causes.
12. The Petitioner further states that dwindling water levels has impacted hydro-power generation capacity necessitating shifting the generation to thermal power using coal, furnace oil, diesel and naphtha. The Petitioner states that this situation was anticipated well in advance and the Petitioner, in the discharge of its statutory powers and functions, recommended certain steps that should have been taken. The Petitioner states that most of those recommendations were disregarded or not complied with by the Respondents resulting in the current crisis of interruptions of power for more than 10 hours per day, which could have been avoided.
13. The Petitioner states that the failure of any one or more of the 1st – 11th Respondents to duly consider the recommendations, suggestions, requests and advice provided by the Petitioner and take action accordingly, in the manner described in the ensuing paragraphs, has resulted in a situation of egregious violation of basic social and economic rights of Citizens whilst causing irreparable and significant damage to the economy.
14. The Petitioner states as follows;
 - (a) From on or about 2016, the Petitioner addressed several letters, and issued advise to certain government authorities, including the Minister of Power and Renewable Energy, requesting urgent attention to meet and cater to the constantly growing demand for electrical energy in Sri Lanka;

The Petitioner attaches herewith marked as PA1 – PA7 copies of several correspondence addressed in this regard and pleads same as part and parcel hereof.
 - (b) From on or about 2017, the Petitioner has been advocating the finalization and publication of the government's policy, particularly with respect to enhancing the component of renewable energy in the energy mix to synchronize with the Least Cost Long Term Generation Expansion Plan ("LCLTGEP");

*The Petitioner attaches herewith copies of the correspondence during the period 2017 – 2022 marked as **PB1 – PB9** and pleads same as part and parcel hereof.*

- (c) Since 2015, no major power generation plants were added to the system and the Petitioner strongly advocated that the situation be immediately addressed by adding powerplants as per the approved LCLTGEP;

*The Petitioner attaches herewith marked as **PC1 – PC13** copies of correspondence relevant to the above and pleads same as part and parcel hereof.*

- (d) On 22.12.2021, the Petitioner became aware, through news media and consumer complaints, of unauthorized power cuts being effected by the 9th Respondent CEB without the prior approval of the Petitioner. The Petitioner immediately investigated and required the CEB to obtain the approval of the Petitioner after demonstrating the actual need for a power cut (load shedding). The Petitioner states that several requests were not approved by the Petitioner as there was sufficient power at the time and load shedding was not warranted. The Petitioner was also instrumental in facilitating alternative solutions such as encouraging off-grid generation of power by large manufacturing establishments, to bridge the deficiencies;

*The Petitioner attaches herewith marked as **PD1 -PD9** copies of correspondence relevant to the above and pleads same as part and parcel hereof.*

- (e) In the meantime, the Petitioner continued to provide advice to the relevant authorities.

*The Petitioner attaches herewith marked as **PE1 -PE3** copies of relevant communications from the Petitioner and pleads same as part and parcel hereof.*

The Petitioner states that unfortunately the above recommendations and/or advice provided by the Petitioner were not duly considered and/or implemented in a timely manner further aggravating the power crisis situation.

15. The Petitioner states that in addition to the above, the lack of foreign exchange to purchase fuel was highlighted by the CEB as the most pressing issue that prevented them from procuring the required amounts of fuel for the generation of electricity. As such, the Petitioner too intervened to facilitate the purchase of fuel and avoid the devastating effects of non supply or limited supply of electricity. The Petitioner further states that, in the above context, the Petitioner had to take the following steps, *inter alia*;

- (a) Directly write to H.E. The President, seeking his intervention as the Head of Government;
- (b) Direct communication with the Heads of Diplomatic Missions in Colombo to ascertain if they could facilitate availability of emergency financing through the government channels for purposes of oil purchases. In fact, the Ambassador to the Republic of China and the High Commissioner of India informed that part of their financial assistance to be provided to the Government of Sri Lanka was, in their opinion, earmarked for purchase of emergency fuel supplies for the electricity sector. However, this allocation was not made available;
- (c) Meeting with the Governor of the CBSL to ensure allocation of required foreign currency;
- (d) Corresponding with the Ministry of Finance and the CEB.

*The Petitioner attaches herewith marked as **PF1 – PF9**, copies of the relevant correspondence and pleads same as part and parcel hereof.*

16. The Petitioner states that parallelly, the Petitioner continued to advice the CEB and the Water Management Secretariat on the need to take steps to manage water resources in the most efficient manner to ensure the sustainable generation of hydro power.
17. The Petitioner states that in addition to the above, the Petitioner also made certain efforts to minimize hardships faced by the Citizens and the ensuing violation of their fundamental rights due to the interruptions in power supply.

*The Petitioner attaches herewith marked as **PG1 – PG4** copies of some of the relevant correspondence and pleads same as part and parcel hereof.*

18. The Petitioner states that in terms of the Monetary Law Act and the laws relating to foreign exchange, it is the responsibility of the MBSL and the CBSL to ensure availability of foreign currency for current account transactions including purchase of fuel and provide the necessary foreign exchange through the Banking system. The Petitioner further states that CEYPETCO, that enjoys a statutory monopoly under the Ceylon Petroleum Corporation Act, is duty bound to ensure the supply of necessary stocks of fuel. In the past, CEYPECTO has been providing continuous supplies of fuel to the CEB, mostly on credit, and that supply was suddenly halted and/or reduced which coincided with the afore stated crisis situation in electricity supply aggravating the same.
19. The Petitioner states that suggestions were made and advice provided relevant to foreign currency shortages impacting the electricity sector. This included emphasizing the need to provide sufficient FOREX on a priority basis to purchase fuel for the generation of electricity and the need to ensure the continuity of the practice of CEYPETCO supply fuel to the CEB, at least until the energy crisis is managed, on the same basis as in the past; i.e. mostly on credit. Although the suggestions were addressed to multiple government authorities, these authorities instead shifted the full responsibility on the CEB to find the required foreign currency and/or fuel on its own without offering meaningful assistance. In addition, the Petitioner also addressed a number of correspondence with a view to encourage conserving energy.

*The Petitioner attaches herewith marked as **PH1 – PH8** copies of some of the relevant correspondence and pleads same as part and parcel hereof.*

20. The Petitioner states that the CEB's financial position has increasingly become weak and unsustainable impacting its viability in the long term. Petitioner's advice provided with a view to enhance, in the long term, efficiency in electricity supply at lower costs through measures such as re-organizations, restructuring, unbundling, and management changes have been met with resistance. In spite of its weak financial position, the CEB has not requested a tariff increase during the last 6 years, which the Petitioner verily believes is due to CEB's failure to fulfill several of the regulatory requirements imposed by the Petitioner. The Petitioner further states that the Petitioner's direction to the CEB to collect outstanding dues from customers within 03 months too has been disregarded due to a contrary directive from the Minister of Power to grant time up to one year to settle electricity bills. The CEB also has failed to abide by the recommendation of the Petitioner in terms of short and long-term planning particularly in anticipating and preparing for a drop in hydro energy at yearly intervals due to weather cycles. The Petitioner also notes that the CEB is yet to receive the subsidies committed by the Government on the recommendation of the Petitioner.
21. The Petitioner states that taking in to account the unfolding situation, the Petitioner addressed, as far back as on 22.02.2022, a note to the Cabinet of Ministers seeking their intervention. The Petitioner verily believes that the said note was not presented to the Cabinet of Ministers. The Petitioner states that the Petitioner stated its requirements very clearly in the said Cabinet Note and requested approximately USD150 Million, which if provided at that time, would have enabled uninterrupted supply of electricity until end of April 2022 to coincide with the commencement of the Monsoon rains which would enhance the hydro generation capacity.

*The Petitioner attaches herewith marked **PI** copy of the Cabinet Note so submitted and most respectfully reserve the right to add the Cabinet of Ministers as Respondents, if Your Lordships deem their formal participation in these proceedings as necessary.*

22. The Petitioner states that it was only on the 21.03.2022 that H.E The President declared, by Extraordinary Gazette bearing No.2272/09, the supply of electricity as essential to the life of the community under the Essential Public Services Act No.61 of 1979. The Petitioner states that notwithstanding the above, the 1st – 11th Respondents continued to fail to provide redress to the crisis situation faced by the electricity sector.

*Copy of the said Extraordinary Gazette dated 21.03.2022 is annexed hereto marked **PJ** and pleaded part and parcel hereof.*

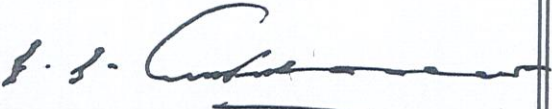
23. The Petitioner states that the above circumstances clearly demonstrate the failure of the Respondents to appreciate and act in terms of the relevant provisions of the sector specific laws and other relevant laws, implement and be guided by regulatory directions, actions, and advice of the Petitioner and a failure to take timely measures best calculated to achieve the statutory objectives as specified in the SLEA viz-a-viz the supply of electricity, which has now resulted in a crisis situation gravely impacting the day to day life of Citizens, their economic and social well-being and full enjoyment of their fundamental rights as guaranteed under the Constitution.
24. The Petitioner further states that the above has also resulted in a situation where the Petitioner is effectively prevented from discharging its' duties, functions and obligations and effectively exercising the powers conferred by Parliament in its capacity as sector regulator for the achievement of the ultimate objective of sustainable development of the electricity sector of Sri Lanka for the welfare of the people.
25. The Petitioner states that the totality of the aforesaid circumstances is contrary to the Directive Principles of State Policy and is seriously impacting the progressive realization of the rights of Citizens.
26. The Petitioner further states that consumer protection has been included as a specific objective in Part VI of the PUCSL Act as the legislature recognizes and imposes a specific duty on the regulator to intervene on behalf of the Citizens in the event of a failure of the sector stakeholders to act in a manner that prioritizes Citizens' welfare and the enjoyment of specifically those fundamental rights that are dependent on a continuous supply of electricity, including the right to livelihood and gainful employment.
27. The Petitioner states that due to the disruption of electricity supply, the Petitioner has received and continue to receive numerous complaints from the public informing how such interruptions are affecting the wellbeing of the Citizens. These particularly include the following;
 - (a) Health services including refrigerated medicines, operating theatres and life support apparatus such as ventilators cannot function;
 - (b) Engaging in employment, especially in the service sectors where constant reliance is placed on use of electricity-based apparatus such as computers, machines, and other such equipment;
 - (c) Telecom operators have informed that continuous disruption is impacting their ability to provide continuous operation of their network transmission systems impacting telecommunication, internet-based services including education and receipt of web based services such as banking;
 - (d) disruption to water supply for drinking, agricultural and other purposes;
 - (e) serious disruptions to industrial activities;

28. The Petitioner states that based on its own estimation based on current world prices, if a sum of USD 200 Million is made available immediately to the CEB for the specific purpose of purchasing fuel, there is a very high possibility that electricity could be supplied with minimum disruption until the end of April 2022 to coincide with the commencement of the rainy season which would enable shifting back to hydro power generation at its full capacity. The Petitioner states that failure to provide the said amount forthwith for the purposes of purchase of fuel at the current world market prices will cause irreparable and irreversible harm to the economy and the community and therefore the Petitioner is advised to state that the Petitioner is entitled to seek interim relief as prayed for.
29. In the above circumstance the Petitioner is advised to state that the Petitioner is entitled to and has statutory authority, legal standing and a duty to invoke the jurisdiction of Your Lordships' Court in the public interest due to the continuous violation of the fundamental rights of the Citizens guaranteed under Article 12(1) (which Your Lordships' Court has held to encompass the dignity of the Citizen and equal protection of the law), Articles 14(1)(g) and 14(1)(h) due to the inaction and/or wrongful actions of the 1st – 11th Respondents as described above.
30. The Petitioner respectfully reserves the right to add further Respondents to this application in the event the necessity arises, and to tender any documents that have not already been tendered with this application and which Your Lordships' Court deem relevant and requisite for the purpose of effectively adjudicating this application.
31. The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.

WHEREFORE, THE PETITIONER RESPECTFULLY PRAYS THAT YOUR LORDSHIPS' COURT BE PLEASED TO:

- (a) Issue notice on the Respondents;
- (b) Grant leave to proceed in this application in the first instance for the violation of Articles 12(1), and/or 14(1)(g), and/or 14(1)(h) of the Constitution;
- (c) Declare that the fundamental rights guaranteed under of Articles 12(1), and/or 14(1)(g), and/or 14(1)(h) of the Constitution have been violated and/or continue to be violated by any one or more of the 1st to 11th Respondents;
- (d) Grant an interim order directing the 1st (Minister of Finance), and/or 2nd (Secretary to the Treasury) and/or 7th (Monetary Board of Sri Lanka) and/or 8th (Governor of the Central Bank) Respondents to immediately allocate USD.200 Million (estimated as per the current world market price of fuel) for the purchase of fuel for the purpose of power generation;
- (e) Grant an interim order directing the 5th (Minister of Energy), 6th (Secretary to the Ministry of Energy), and 11th (CEYPETCO) Respondents to forthwith commence and continue to supply fuel to the CEB;
- (f) Grant an interim order directing the 3rd (Minister of Power), 4th (Secretary, Minister of Power), 5th (Minister of Energy), and 6th (Secretary to the Ministry of Energy) to take all steps forthwith as are necessary and expedient to ensure availability of sufficient fuel for the generation of electricity and to inform to Your Lordships court the steps so take;
- (g) Grant an interim order directing the 1st (Minister of Finance), 2nd (Secretary to the Treasury) and 8th (Governor of the Central Bank) Respondents, to take all steps forthwith as are necessary and expedient to ensure availability of sufficient financing to purchase, on a priority basis, fuel for the generation of electricity and to inform to Your Lordships' Court the reasons as to why funds have not been allocated so far, including from several official credit lines offered, for the generation of electricity as per the request of the Petitioner;

- (h) Grant an appropriate order directing the 1st (Minister of Finance) and/or 2nd (Secretary to the Treasury), and/or 7th (Monetary Board of Sri Lanka) and/or 8th (Governor of the Central Bank) Respondents to ensure, as a matter of priority, the availability of sufficient foreign exchange for the purchase of fuel for uninterrupted and continuous generation of electricity;
- (i) Grant an appropriate order directing the 5th (Minister of Energy), 6th (Secretary to the Ministry of Energy) and 11th (CEYPETCO) Respondents to continue to supply fuel to the CEB for purposes of electricity generation and to deal with recovery of amounts as due through legal means, independent of and minimum disruption to the supply of fuel;
- (j) Grant an appropriate order directing the 3rd (Minister of Power), 9th (Secretary, Ministry of Power) and/or 9th (CEB) and/or 10th (General Manager – CEB) Respondents to take steps forthwith to abide by the relevant advice and directives issued by the Petitioner in order to achieve financial viability to provide a continuous, sustainable and an efficient supply of electricity at reasonable cost to the Citizens in terms of the SLEA read with Ceylon Electricity Board Act No. 17 of 1969;
- (k) Grant costs;
- (l) Grant such other and further relief as Your Lordships' Court seem meet.


Attorney at Law for the Petitioner

Settled by

Yohan Cooray Esqr,
Attorney at law.

Niranjana Arulpragasam Esqr,
Attorney at law.

Chamith Senanayake Esqr,
Attorney at law.

Harsha Fernando Esqr,
Attorney at law.

