

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

**In the matter of an Application for a mandate in  
the nature of *Writ of Certiorari, Mandamus and  
Prohibition* under article 140 of the Constitution  
of the Democratic Socialist Republic of Sri  
Lanka**

1. Centre for Eco- Cultural Studies,  
No. 1613, Malabe Road, Kottawa,  
Pannipitiya and  
P.O. Box 03,  
Diyakapilla, Sigiriya.

2. Fahima Sahabdeen,  
29/6, Guilford Crescent,  
Colombo 07.

**PETITIONER**

**CA/WRIT/370/2015**

**Vs,**

1. H. D. Ratnayake,  
Director General,  
Department of Wild Life Conservation,  
811A, Jayanthipura,  
Battaramulla.

2. Anura De. Silva,  
Director, National Zoological Gardens,  
Department of National Zoological Gardens,  
Anagarika Dharmapala Mw, Dehiwala.

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

**RESPONDENTS**

**Before:** **Vijith K. Malalgoda PC J (P/CA) &**

**S. Devika de. L Tennakoon J**

**Counsel:** Ananda Nanayakkara with Mrs Mihiri Gunawardena for the Petitioners  
Yuresha Fernando SC for the Respondents

Argued on: 27.01.2016

Judgment on: 06. 05.2016

**Order**

**Vijith K. Malalgoda PC J**

The 1<sup>st</sup> and the 2<sup>nd</sup> Petitioners namely, Centre for Eco- Cultural Studies and Fahima Sahabdeen have come before this court seeking inter alia,

- b) Make order in the nature of *Writ of Certiorari* quashing the decision/s to take for four Sloth Bears out the rehabilitation programme;
- c) Make order in the nature of *Writ of Certiorari* quashing the decision of the 1<sup>st</sup> Respondent to hand over the four Sloth Bears to the National Zoological Gardens and/ or the Pinnawela Zoo;
- d) Make order in the nature of *Writ of Certiorari* quashing the decision/s of the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents to terminate the rehabilitation of the four Sloth Bears and/ or to place them in a Zoological Garden;
- e) Make order in the nature of *Writ of Mandamus* directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to return the said four Sloth Bears to the rehabilitation programme;

- f) Make order in the nature of *Writ of Mandamus* directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to take effective steps to carry out in full the rehabilitation programme in respect of the four Sloth Bears;
- g) Make order in the nature of *Writ of Mandamus* directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, to take effective measures to give full effect to the rehabilitation programmes being carried out in respect of the threatened and endangered fauna of Sri Lanka;
- h) Make order in the nature of *Writ of Prohibition* prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, from taking decisions contrary to the rehabilitation programme pertaining to the said Sloth Bears;
- i) Make order in the nature of *Writ of Mandamus* directing the Respondents to develop guidelines in respect of rehabilitation of rescued and abandoned endangered and threatened species;
- j) Make order in the nature of a stay order, interim order staying the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from taking any steps contrary to the rehabilitation programme in respect of the four Sloth Bears pending the final determination of this application;
- k) Make order in the nature of a stay order, interim order directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to immediately return the said Sloth Bears to the rehabilitation programme at ETH Udawalawe and/or Giritale and to continue with their rehabilitation pending the final determination of this application;
- l) Make an order directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to furnish to Your Lordship's Court any agreement between the National Zoological Gardens and Department of Wild Life Conservation in relation to wild animals that are found orphaned, abandoned or injured or are rescued by the Department of Wild Life Conservation;
- m) Make order in the nature of *Writ of Certiorari* quashing any agreement between the National Zoological Gardens and Department of Wild Life Conservation in relation to handing over to

the Department of Zoological Gardens of wild animals that are found orphaned, abandoned or injured or are rescued by the Department of Wildlife Conservation;

As observed by this court the two Petitioners 1<sup>st</sup> being an organization involved in the conservation and preservation of fauna and flora of Sri Lanka and the 2<sup>nd</sup> being a writer who advocates animal rights through her writings and also a past secretary for the society for the Protection of Animal Rights have filed the present application as public spirited persons.

In the case of *Wijesiri V. Siriwardena [1982] 1 Sri LR 171* Court of Appeal has confirmed the right of the Petitioners to invoke writ jurisdiction of the Court of Appeal in the public interest. In the said case Wimalarathne J whilst Ratwatte J concurring held, "To apply for a *Writ of Mandamus* it is not necessary to have personal interest but it is sufficient if the applicant can show a genuine interest in the matter complained of and that he comes before court as a public spirited person, concern to see that the law is obeyed in the interest of all." Having considered the material placed we are satisfied that the Petitioners to the case in hand have sufficient interest to come before this court even though the *locus standi* of the two Petitioners were not challenged by the Respondents before this court.

The case before this court as submitted by the Petitioners, refers to a decision taken by the 1<sup>st</sup> Respondent to transfer four Sloth Bears to the Department of Zoological Gardens, on a request made by the 2<sup>nd</sup> Respondent to be kept at Pinnawala Zoological Garden.

When this matter was supported before us, for notices the Learned Counsel for the Petitioner, in addition to the notices on the Respondents move for interim relief as prayed in paragraphs (j) and (k) to the petition but, the Learned Senior State Counsel who represented the 1<sup>st</sup> and 2<sup>nd</sup> Respondents without objecting for such relief being granted undertook to keep the 4 sloth bears away from public until the conclusion of the present case. The Learned Counsel for the Petitioners agreed for the said proposal instead of pursuing the interim relief as prayed for. However considering the importance and the urgency of this matter this court decided to grant both parties a time line to submit their pleadings

and fixed the matter for argument for 19.01.2016. Even though this court could not take up this case for argument on that day, the arguments were concluded within a week since then.

As stated above, the application before this court refers to four Sloth Bears that were held in the custody of the Department of Wild Life Conservation. According to the Petitioners the Sloth Bears in Sri Lanka is a separate subspecies of Sloth Bears live in Asian Region which is identified as an endangered species in the Asian Region and identified as "*Melursus ursinus inornatus*" and declared by the Fauna and Flora Protection Ordinance No. 2 of 1937 (as amended) under schedule II of the ordinance as "Mammals that are strictly protected" in terms of the law. It was further submitted that the Sloth Bear is listed as "vulnerable" in terms of the IUCN Red List of Threatened Species. It was the position taken up by the Petitioners before this court that rehabilitation and re-integration to endangered species such as wild elephants and Sloth Bears were one of the main objective of the Department of Wild Life Conservation and in support of the above position had submitted marked P-13 A-D the performance Reports of the Department of Wild Life Conservation for the years 2011-2014.

As revealed by the documentation submitted before us and the arguments placed, the four Sloth Bears referred to this case were in the custody of the Department of Wild Life Conservation and three out of four Sloth Bears were kept within the rehabilitation programme at the Elephant Transit Home in Udawalawa while the 4<sup>th</sup> was kept at the Wild Life Health Management division at Girithale. According to the Petitioners the four Sloth Bears were being maintained at these centres under conditions which were conducive to their final re-introduction to the wild which included minimum contact with humans with regard to the conditions under which the bears were kept. With regard to the decision taken by the Department of Wild Life Conservation to complete the rehabilitation process by releasing the Bears to the Jungle, the Petitioners have heavily relied on a press release issued by the All Ceylon Game Guards Association which was produced marked P-7. According to the said press release,

- a) The Bears in question have been brought up under conditions conducive to their rehabilitation and re-introduction,
- b) A radio collar worth of Rs 600,000/- had been already received in order to track the movement of the adult bears after re-introduction to the wild,
- c) The fencing material required to house the bears within the Yala National Park for further acclimatization/ familiarization prior to release had already been transported to the said location.
- d) The Bear at Girithale too had been kept under conditions of limited contact with humans preparatory to final release to wild.
- e) The veterinary officers of the Department of Wild Life Conservation had already recommended their re-introduction to the wilds.

In spite of all those measures taken by the Department of Wild Life Conservation to re-introduction the Sloth Bears to wild with lot of dedication by its officers as submitted in P-7, it is alleged by the Petitioners that the 1<sup>st</sup> Respondent had suddenly taken a decision to handover the four Sloth Bears to the Department of Zoological Gardens to keep the four Sloth Bears at the New Zoological Garden at Pinnawala after abandoning the said rehabilitation and re-introduction process which was carried out for several months spending a large sum of public money.

Petitioners have produced marked P-5 and P-6 two letters said to have written by the 2<sup>nd</sup> Respondent and the Secretary to the Ministry of Tourism to the 1<sup>st</sup> Respondent requesting the said release.

Even though the Petitioners have not been able to submit any documentary proof of any decision taken by the 1<sup>st</sup> Respondent in response to the requests referred to above in P-5 and P-6, Petitioners had submitted that the said rehabilitation programmes were abundant and the bears were taken to Hambantota and Dehiwala until the construction work is completed in Pinnawala Zoological Gardens.

In response to the above position taken up by the Petitioner, the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents whilst admitting their decision to transfer the four Sloth Bears to Pinnawala Zoological Gardens have submitted that,

- a) Sloth Bears (*Melursus ursinus*) is listed under schedule II ( Mammals and Reptiles) of the Fauna and Flora Protection Ordinance No. 2 of 1937 (as amended) and are strictly protected and categorized as “vulnerable” on the National Red List 2012 of Sri Lanka.
- b) The Department of Wild Life Conservation and the 1<sup>st</sup> Respondent operate in accordance within a mandate specified by law and in terms of the provisions of the Fauna and Flora Protection Ordinance No.2 of 1937 (as amended) which includes the rehabilitation of orphaned wild animals.
- c) However no specific centres for rescue and rehabilitation of orphaned animals have been established so far, except for Elephant Transit Home (ETH) or commonly known as “Ath Athuru Sevana” for the rehabilitation and re-integration of Elephants.
- d) In the absence of specific centre for rescue and rehabilitation of other wild animals, facility at Elephant Transit Home (ETH) are currently being used as a temporary measure due to the constant presence of assigned veterinarians who are available to attend to such animal when required.
- e) The Sloth Bears in question, were rehabilitated at Elephant Transit Home (ETH) are now tame and have become familiar with humans and may have difficulty in adopting to new environment and that on previous occasions the Department had faced difficulty in releasing a leopard and a bear to their natural habitat since they were unable to adopt in to their new environment.
- f) The purpose of handing over the animals to zoo includes conservation and breeding objectives.

However when analyzing the position taken up by the Respondents before this court, it is important to note that this court is surprise to observe that the Department of Wild Life Conservation has not realize

the money and efforts they utilize to rehabilitate the four Sloth Bears were of no use until they received P-5 and P-6 in order to abundant the rehabilitation programme. The 1<sup>st</sup> Respondent had further failed to explain this court as to the next step the department would have taken, if no request was made as evident in P-5 and P-6 to hand over the Sloth Bears to the Department of Zoological Gardens, in the light of the difficulties they have encountered in releasing wild animals to natural habitat.

Even though the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have made an attempt to justify their decision to abundant the rehabilitation/ re-integration programme, they have failed to answer the position taken by the Petitioners with regard to the rehabilitation process carried out by the Department of Wild Life Conservation until the four Sloth Bears were arbitratrally removed from the rehabilitation programme.

As observed by me earlier in this Judgment the Petitioners have heavily relied on the press release issued by the All Ceylon Game Guards Association which was produced marked P-7. The contents of the said documents were referred to in paragraph 25 of the Petition filed before this court and, surprisingly the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in their objections filed before this court had failed to challenge or answer the contents of the said paragraph but, in the Petition as well as in the affidavit filed before this court by the 1<sup>st</sup> Respondent had submitted that he is unaware of the contents of paragraph 25 of the Petition.

As observed in this Judgment the said paragraph refers to receiving a radio caller worth of Rs. 600,000/- in order to track the movements of the adult bear after re-introduction to the wild and transporting fencing material to Yala National Park for further acclimatization/ familiarization prior to their release to wild, in addition to the other things averred to.

In the 4<sup>th</sup> paragraph of P-7, All Ceylon Game Guards Association has further said, “උඩවලට ඇත් අතුරු සෙවණ භාරයේ සිටි වලසුන් තිදෙනා මිනිසුන් හා ගැටීම අවම කර කැලයට අනුගතවීමට සුදුසු පරිසරයක ජීවත්වූ අතර ඔවුන් කැලයට මුදාහැරීමට අවශ්‍ය කටයුතු



සම්පාදනය කර අවසන්ව තිබුණි..... එම සතුන් වනයට මුදාහැරීම සුදුසු බව අප දෙපාර්තමේන්තුවේ පශු වෛද්‍ය වරුන්ද නිර්දේශ කර තිබුණි.”

This court is concerned over the conduct of the 1<sup>st</sup> Respondent before this court when he has strangely submitted that he was unaware of a rehabilitation process carried out by his own department as referred to above and also taking specific measures for re-introduction as referred to above.

The 1<sup>st</sup> Respondent has further failed to contradict the purported recommendation said to have given by the veterinary surgeons of the Department as referred to in P-7.

During the arguments before this court the Petitioners have brought to our notice the annual performance reports of the Department of Wild Life Conservation from 2011-2014 and submitted that the Department had given top priority for the management of animal rehabilitation centres and therefore the 1<sup>st</sup> Respondent as the Head of the said Department cannot simply submit that the Department does not have facility to rehabilitation of other wild animals, when the Fauna and Flora Protection Ordinance mandate the department to rehabilitate the orphaned wild animals.

The Respondents have further submitted before this court that the 1<sup>st</sup> Respondent is empowered by the said ordinance to take a decision with regard to the animals managed under the said ordinance by the Department, considering, their well being, conservation and breeding objectives.

However it was the position of the Petitioners before this court that, in the document P-7, by the very officers who were managing the Sloth bears during the rehabilitation, had clearly indicated the manner in which the Sloth Bears were kept and the need for their rehabilitation. It was further submitted that these are Sloth Bears that originally came from the wild and when released to the wild would not become a new introduction.

With regard to the request made in P-5, the Petitioners have submitted before this court that the Zoological Gardens at Dehiwala already has six Sloth Bears out of which a large male Sloth Bear is

being kept caged away from public view due to aggression and the breeding programmes carried out at the Zoological Gardens had limited efforts with regard to Sloth Bears.

However the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have not challenged or denied the said submission but submitted that they were unaware of such issues referred to in paragraph 23 of the Petition.

As revealed during the arguments before this court the Sloth Bear is listed under schedule II of the Fauna and Flora Protection Ordinance No. 2 of 1937 (as amended) and are strictly protected and that the Sloth Bears is categorized as “vulnerable” on the National Red List 2012 of Sri Lanka.

In terms of the provisions of the said ordinance the 1<sup>st</sup> Respondent is mandated with the rehabilitation of orphaned wild animals.

As admitted before this court the four Sloth Bears referred to this Petition were undergoing a rehabilitation programme where the Sloth Bears were being maintained at those centres under condition which were conducive to their final re-introduction to the wilds, which includes minimum contact with humans, until the request was made by P-5, P-6 for transferring them to be kept at Pinnawala Zoological Gardens.

The Respondents have failed to satisfy us that the decision of the 1<sup>st</sup> Respondent to transfer the said Sloth Bears from the said rehabilitation programme was taken in good faith, bearing in mind the well being of the Sloth Bears and their conservation and breeding objections of the Sloth Bears under Department of Zoological Gardens.

When considering the above material placed before us it is our view that the said decision of the 1<sup>st</sup> Respondent to abundant the ongoing rehabilitation programme of the four Sloth Bears in order to hand them over to the Department of Zoological Gardens to kept them at Pinnawala Zoological Garden was an arbitrary decision reached by him, ignoring the mandate given to him to by the Fauna and Flora Protection Ordinance No. 2 of 1937.

The 1<sup>st</sup> Respondent has further admitted the receipt of P-12 where a request had been made to immediately bring the Sloth Bears back to the ongoing rehabilitation programme for release into the wild as planned by the Health Management Division of the Department of Wild Life Conservation.

This court further observes that the Department of Wild Life Conservation is mandated by the Fauna and Flora Protection Ordinance No. 2 of 1937 (as amended) for the rehabilitation of orphaned wild animals and it is the duty of the said department to conduct such programs irrespective of the kind of wild animal orphaned due to various reasons.

Considering all the matters referred to above by me and the arguments placed before this court by both parties, this court decides to;

- a) Issue a mandate in the nature of *Writ of Certiorari* as prayed in paragraphs (b) (c) and (d) to the  
Petition
- b) Issue a mandate in the nature of *Writ of Mandamus* as prayed in paragraphs (e) (f) and (i) to the  
Petition
- c) Issue a mandate in the nature of *Writ of Prohibition* as prayed in paragraph (h) to the Petition

Application is allowed.

**PRESIDENT OF THE COURT OF APPEAL**

**S. Devika de. L Tennakoon J**

I agree,

**JUDGE OF THE COURT OF APPEAL**