

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

In a matter of an application for mandates in the nature of Writs of Certiorari and Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No. 54/2021

1. Nirmal Anrudha Madanayaka,
21, Anderson Road,
Colombo 5
2. Kotagama Senaka Savindralal,
86/4, Kumaragewatta, Pelawatte,
Battaramulla
3. D.P.C. Lanka (Private) Limited,
No. 133/65, St. Bernadette Mawatha,
Rilaulla,
Kandana.
4. Golden Sands Beach Resort (Private)
Limited,
No. 53/5, Perera Mawatha, Off S. De S.
Jayasinghe Mawatha,
Nugegoda
5. Taru Villas (Pvt) Ltd.,
No. 70 (2/1), 2nd Floor,
Lucky Plaza Building,
St. Anthony's Mawatha,
Colombo 3.
6. Verandha (Private) Limited,
No. 40, Galle Face Court 2,
Colombo 1.

PETITIONERS

Vs.

1. Director General,
Department of Coast Conservation and
Coastal Resources Management,
4th Floor, New Secretariat Building,
Maligawatte,
Colombo 1.
 2. Ceylon Fishery Harbours Corporation,
No. 15, Rock House Lane,
Colombo 15.
 3. J.P. Mudalige,
General Manager,
Ceylon Fishery Harbours Corporation,
No. 15, Rock House Lane,
Colombo 15.
 4. Central Environmental Authority,
104, Denzil Kobbekaduwa Mawatha,
Sri Jayawardenapura Kotte.
 5. Hon. Douglas Devananda,
Minister of Fisheries and Aquatic
Resources Development.
 6. Hon. Kanchana Wijesekera,
State Minister of Fisheries.
- 5th and 6th Respondents at
Ministry of Fisheries and Aquatic
Resources Development,
New Secretariat,
Maligawatta Road,
Colombo 10.
7. Pradeep Shantha Andrahennadi
"Chandanee",
Mawella, Nakulugamuwa
- and 220 Others

RESPONDENTS

Before: Arjuna Obeyesekere, J / President of the Court of Appeal
Mayadunne Corea, J

Counsel: Romesh De Silva, P.C., with Niran Anketell for the Petitioners

Priyantha Nawana, P.C., Additional Solicitor General with Ms. Sabrina Ahamed, State Counsel for the 1st – 3rd, 5th and 6th Respondents

Sanjeeva Jayawardena, P.C., with Dr. Milhan Mohammed, Ms. Ranmalee Meepagala and Ms. Ridmi Beneragama for the 7th – 227th Respondents

Supported on: 9th March 2021, 17th March 2021, 19th March 2021, 23rd March 2021, 29th March 2021, 30th March 2021 and 31st March 2021

Written Tendered on behalf of the Petitioners on 6th April 2021

Submissions:

Tendered on behalf of the 1st – 3rd, 5th and 6th Respondents on 9th April 2021

Tendered on behalf of the 7th – 227th Respondents on 16th April 2021

Decided on: 27th April 2021

Arjuna Obeyesekere, J., P/CA

This application was filed on 1st February 2021. Prior to this application being supported, a group of fishermen belonging to the fishing community in Mawella filed a petition seeking to intervene in this application. Upon the learned President's Counsel for the Petitioners agreeing to the said application for intervention, the Interventient – Petitioners were added as the 7th – 227th Respondents. The Petitioners were thereafter afforded an opportunity of responding to the matters set out in the petition of the said Respondents.

This matter was taken up for support on several dates. This Court has had the benefit of extensive oral submissions from all learned President's Counsel as well as written submissions filed on behalf of all parties.

The facts of this matter very briefly are as follows.

Mawella Bay is situated on the Southern Coast of Sri Lanka between Dondra and Tangalle and is crescent shaped. The coastal line of the Bay is approximately two kilometers long. The Bay is characterised by a long rocky headland, approximately 500m in length. The Petitioners state that the Mawella Bay contains one of the finest beaches in Sri Lanka for recreational and tourism purposes. The Petitioners claim that either directly or through controlling interests that they hold in companies, they own vast extents of land bordering the coastal line of the Mawella Bay. This claim has been disputed by the learned President's Counsel who appeared for all Respondents.

The Petitioners state that in December 2020, they became aware that the 2nd Respondent, the Ceylon Fishery Harbours Corporation is about to construct within the Mawella Bay a fishery anchorage with a length of 300 metres and two other offshore breakwaters, each having a length of 60 metres. The Petitioners have stated further that the 2nd Respondent, having carried out an Initial Environmental Examination (IEE) relating to the said construction, had submitted it to the Department of Coast Conservation and Coastal Resource Management. While a draft copy of the said IEE has been marked 'P5', the Petitioners had moved that this Court call for the original IEE that was submitted to the Department of Coast Conservation and Coastal Resource Management. The learned Additional Solicitor General has accordingly tendered with the written submissions of the 1st – 3rd, 5th and 6th Respondents an original of the final IEE, signed by all members.

The Petitioners state further that the 1st Respondent, the Director General of the Department of Coast Conservation and Coastal Resource Management had thereafter issued the development permit 'P6' to the 3rd Respondent, the General Manager of the Ceylon Fishery Harbours Corporation in terms of Section 14 of the Coast Conservation and Coastal Resource Management Act No. 57 of 1981, as amended (the Act) to carry out the construction of the said anchorage and the two breakwaters. Aggrieved by the decision to construct the said anchorage and the

breakwaters and the subsequent issuance of the said development permit, the Petitioners filed this application, seeking *inter alia* the following relief.

- (a) A Writ of Certiorari to quash the development permit 'P6';
- (b) A Writ of Prohibition preventing the 1st Respondent from extending the validity period of the said development permit 'P6';
- (c) A Writ of Prohibition prohibiting the 2nd and 3rd Respondents from constructing the said anchorage and breakwaters.

The learned President's Counsel for the Petitioners presented four arguments before this Court in support of his position that the construction of the anchorage and breakwaters should not be proceeded with and that the issuance of the development permit is contrary to the provisions of the law.

The first argument is that there is no necessity for an anchorage and breakwater in the Mawella Bay. The essence of this argument is that the Kudawella and Tangalle fishery harbours are situated in close proximity to the Mawella Bay and that there is no need to create another formal landing site for boats in Mawella. It is clear that the Petitioners are concerned that the creation of another *fishery harbour* at Mawella Bay would pollute the pristine beaches at Mawella and thereby reduce the attraction of Mawella to tourists.

In considering this submission, I shall commence with the draft IEE report marked 'P5', the contents of which are identical to the original of the IEE tendered to this Court by the learned Additional Solicitor General. According to 'P5':

- a) The fishing industry in Mawella area has a long history and is well established;
- b) The Mawella Bay acts as a boat landing site for about 1000 families living in four Grama Niladhari divisions that depend on fishing activities for their livelihood;
- c) There are seven fisheries associations formed by the fishermen of the area;

- d) The livelihoods of the fishing families have been affected by the modernisation of the fishing industry, thereby pushing them to depend on Government welfare schemes;
- e) The fishermen who operate small boats have no access to other landing sites or fishery harbours located in Kudawella or Tangalle;
- f) It is difficult to land the boats at the beach during the high sea period, and therefore safe landing facilities are required if the fishermen are to engage in fishing over a longer period of the year and thereby improve their productivity;
- g) In order to ensure sustainability of the fishing industry and to eradicate the prevailing development disparities in the fishing industry, it is necessary to improve the existing facilities at Mawella Bay by providing infrastructure by way of the proposed anchorage.

The learned President's Counsel for the 7th -227th Respondents submitted that the decision to develop the Mawella Bay as a fisheries landing site was a Policy decision that was taken by the Cabinet of Ministers several years ago, as part of an overall plan to develop fisheries harbours and facilities right around the Country. He drew the attention of this Court to three documents which demonstrate the rationale for the construction of the anchorage.

The first document is the Cabinet Memorandum dated 5th September 2018, marked 'IP19' submitted by the Minister of Fisheries and Aquatic Resources Development and Rural Economy, which refers to the decision taken by the Cabinet of Ministers in September 2013 to develop and rehabilitate fishery harbours, anchorages, and landing sites throughout the Country, including at Mawella.¹ The said Memorandum goes onto state that having taken into consideration the requests of the fisheries community for enhanced infrastructure facilities, the Government has taken a policy decision to construct an anchorage at Mawella. The said Memorandum emphasizes

¹ See 'Coastal Area Management in Sri Lanka' by Kem Lowry and H.J.M. Wickremaratne (annexed to the written submissions of the Petitioners) which states as follows: 'The Sri Lanka Government has made coastal fisheries one of their primary development priorities. The Government has provided subsidies for boats and engines and developed marketing, harbour and anchorage facilities.'

the fact that the interests of the fishing community and the environmental concerns have been taken into consideration.

The second document is a letter dated 24th August 2018 marked '**IP18**' sent by the Director General, Department of National Planning, where it is stated as follows:

“it is apparent that the harnessing of marine resources on a sustainable manner requires modern and well equipped fishery infrastructure, specially fishery harbours, improved anchorage facilities and landing sites. Since nearly 2.6 million people of the country directly or indirectly engage in the fishery sector for their livelihood, strengthening fisheries infrastructure will directly benefit the country’s socio-economic development on one hand and food security on the other.”

The third document is a letter dated 31st October 2019 marked '**IP27**' by which the Department of Fisheries and Aquatic Resources have highlighted the difficulties faced by fishermen as a result of not having an anchorage facility at Mawella.

The learned President’s Counsel for the 7th - 227th Respondents submitted that an anchorage would provide a safe landing area and a safe unloading area, as the waters within the basin created by the anchorage would be calm and the boats would not be tossed around.

The Petitioners too admit that even as at now, *there are approximately seventy five boats berthed* at the Mawella Beach. It was the submission of the Respondents that presently the entire beach area is scattered with small boats, and that the anchorage would in fact serve as a dedicated landing area for the small boats, thus negating to a great extent the necessity of using the rest of the beach area for the landing of boats.

It was the submission of the learned President’s Counsel for the 7th -227th Respondents that the anchorage would also provide berthing facilities to boats which are engaged in whale watching and other recreational activities related to tourism, and that the fishing and tourism industry can mutually co-exist.

While it is not for this Court to decide if a necessity exists for an anchorage at Mawella Bay, a consideration of the above material makes it clear that the necessity for an anchorage at Mawella Bay has been carefully considered by the Department of National Planning and the Cabinet of Ministers, and that there in fact exists a necessity to provide such facilities to uplift the standard of living of the fisheries community living in Mawella.

I shall now consider the submission of the Respondents with regard to the necessity for the two offshore breakwaters. While the anchorage was to meet the needs of the fishing community, the construction of the two offshore breakwaters was to reduce the erosion of the beach in the Mawella Bay during the monsoon period, thereby safeguarding the interests of the tourism industry by having a beach right throughout the year.

It has been submitted by the Petitioners that the Coastal Zone and Coastal Resource Management Plan marked 'P9' prepared in terms of Section 12 of the Act has identified that construction of unplanned or poorly planned rigid coastal structures are causing erosion. While 'P9' does say so, construction of offshore structures as a method of preventing sea erosion has been adopted in many countries including Sri Lanka, with success.²

The learned Additional Solicitor General drew the attention of this Court to paragraphs A6, C.1.3, C.2.4.1 and D.9.2.1, from the draft IEE Report 'P5' which confirm the following:

- a) There exists beach erosion during the South West monsoon;
- b) It has been a long standing issue in the area;
- c) The proposed offshore breakwaters are expected to mitigate the coastal erosion during the South West monsoon;
- d) The breakwaters may lead to the establishment of wider coastal area and sand deposits.

² This position is confirmed by the article titled, "Coastal Area Management in Sri Lanka" submitted with the written submissions filed by the Petitioners; supra.

Having examined the contents of the IEE, it appears that the Respondents have carried out the necessary studies to establish not only a necessity for the said breakwaters, but also that it is the only option available and would not cause any erosion elsewhere. I am therefore of the view that it is beyond the scope of the jurisdiction of this Court to declare that there exists no necessity for the said breakwaters.

The second submission of the learned President's Counsel for the Petitioners was that the 1st Respondent should have called for an Environmental Impact Assessment (EIA) Report prior to issuing a development permit, and that his decision not to do so is illegal and unreasonable.

Lord Diplock in **Council of Civil Service Unions vs Minister for the Civil Service**³ identified 'illegality', 'irrationality' and 'procedural impropriety' as the three grounds upon which administrative action is subject to control by judicial review. In considering the second submission on behalf of the Petitioners, I shall bear in mind the following description of *illegality* and *irrationality*:

“By 'illegality' as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it..”

“By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness'⁴. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.”

Once the necessity for the said anchorage and breakwaters was established, the Ministry of Fisheries has contracted the services of M/s Lanka Hydraulic Institute Limited to carry out a feasibility study in order to determine the location of the said anchorage and the breakwater. A copy of the said feasibility study report has been marked '**IP1a**'. The Petitioners have not sought to quash the said report. In the

³ 1985 AC 374

⁴ Associated Provincial Picture Houses Ltd v Wednesbury Corporation 1948(1)KB 223

absence of any challenge to the contents of the said report, the necessity for this Court to examine the validity of that report does not arise.

In considering the second submission, it would be useful to understand what is sought to be constructed by the 2nd Respondent. As already observed, there is going to be three structures. The first is an anchorage breakwater of 260m length, connected to land and extending from the shore to a depth of -5m MSL. As set out in 'P5', it has sea side slope of 1:2 and lee side slope of 2:3. The breakwater head section has a slope of 1:2. The crest width at the beginning is 2.75m while at the end of head section, it is 5.5m. The design has been prepared taking into consideration stability, wave run up and overtopping. The stability of the anchorage has been assessed in terms of the Hudson's Formula and the Van Der Meer's Formula, and the sizes of the armour has been computed accordingly. The other two structures are offshore breakwaters, with a length of 60 feet each and located at a depth of 3m and at close distance from the coastal line.

All three structures will be constructed utilising granite and will consist of three layers, namely the primary, secondary and the core layers, stacked one on top of the other, with the granite being of different sizes and weight.⁵ The structural design of all three structures, prepared by Lanka Hydraulic Institute Limited is available in 'P5'.⁶ In simple terms, the above constructions involve laying on the sea bed three layers of granite with the necessary structural support that would provide the protection that is expected.

Part III of the Coast Conservation and Coastal Resource Management Act No. 57 of 1981, as amended (the Act) contains provisions relating to the necessity to obtain a permit and the issuance thereof to carry out any development activity within the coastal zone.

Section 14(1) provides that *"no person shall engage in any development activity other than a prescribed development activity within the Coastal Zone except under the authority of a permit issued in that behalf by the Director"*.

⁵ Vide paragraph B1 of 'P5'.

⁶ Vide page 16 and Annex IV of 'P5' – Drawing Nos. 1711 M02 and M03.

Section 14(3) mandates an application to be submitted to obtain such permit. The parties are in agreement that the 3rd Respondent was required to apply and obtain from the 1st Respondent a permit prior to engaging in the construction of the said anchorage and breakwaters.

The procedure that should be followed by the 1st Respondent in respect of an application is set out in Section 16 (1) of the Act, which reads as follows:

“Upon receipt of an application for a permit to engage in a development activity within the Coastal Zone as required by subsection (3) of section 14, the Director-General may require the applicant to furnish

an initial environmental examination report, or

an environmental impact assessment report

relating to the development activity as the case may be, or both such reports. It shall be the duty of the applicant to comply with such requirement. Every initial environmental examination report or environmental impact assessment report shall contain such particulars as may be prescribed.”

It would perhaps be relevant to re-produce at this stage, the definitions given in the Act for an EIA and an IEE:

*“ ‘initial environmental examination report’ means a written report wherein possible impacts of the development activity on the environment shall be assessed **with a view to determining whether the impacts are significant** and therefore requires the preparation of an environmental impact assessment report. Such report shall contain all details and descriptions, data maps, designs and other information which is relevant to the development activity”*

“ ‘environmental impact assessment’ means a written analysis of the predicted environmental consequences of a proposed development activity, and includes a description of the avoidable and unavoidable adverse environmental effects of the proposed development activity, a description of alternatives to the activity which might be less harmful to the environment of the Coastal Zone, together

with the reasons why such alternatives were rejected, and a description of any irreversible or irretrievable commitments of resources required by the proposed development activity”

Whether an IEE should be called or whether an EIA should be called straight away would therefore depend on the nature of the construction that is contemplated.

Having received the application of the 3rd Respondent and bearing in mind what was proposed to be constructed, the 1st Respondent, by his letter dated 8th March 2019 had informed the 3rd Respondent as follows:⁷

“Considering the possible environmental and socio-economic impacts due to the proposed project, it was decided to carry out the Initial Environmental Examination (IEE) procedure to consider granting approval for the above project.

You are kindly requested to submit the Initial Environmental Examination Report for the proposed fishery anchorage facility at Mawella in Hambanthota District. The Terms of Reference (TOR) for the IEE Report is sent herewith.

The IEE Report must address all matters referred to in the TOR...”

The Terms of Reference (TOR) referred to above sets out in detail the matters that must be addressed by the 2nd Respondent in the IEE, including the adverse environmental impact together with the measures that must be adopted to mitigate such adverse impacts.⁸ The Petitioners have not complained that the TOR given by the 1st Respondent is inadequate or that it fails to address the proper concerns relating to a project of this nature. In my view, the decision of the 1st Respondent to call for an IEE is within the powers conferred on the 1st Respondent by Section 16(1) of the Act. By doing so, the 1st Respondent has not acted illegally or *ultra vires* his powers, nor can such a decision be described as being irrational or unreasonable.

Section 16(2) of the Act provides as follows:

⁷ This letter is available at Annex I of ‘P5’.

⁸ The TOR is available at Annex I of ‘P5’.

“In cases where an initial environmental examination report is requested by the Director General, he may, on receipt of such report and if it appears that such report is sufficient for the purpose of determining, whether or not to grant the permit, dispense with the requirement of providing the environmental impact assessment report.”

Thus, it is mandatory that either an IEE or an EIA must be carried out. Once an IEE is carried out, the decision whether an EIA should also be carried out depends on the contents of the IEE Report. In this regard, it is important to note that it is the 1st Respondent who prepared the TOR to be followed by the Project Proponent, and that it is the 1st Respondent who is in the best position to decide if an IEE is sufficient. While the Petitioners have not produced any material to show that the 1st Respondent should have called for an EIA or that there would be adverse environmental effects arising from the proposed development activity, this Court does not have the expertise to decide whether the IEE Report is not sufficient and that an EIA Report should have been called for. This Court would therefore have to be guided by the decision of the 1st Respondent, in the absence of any material that a Project of this nature requires an EIA to be carried out.

This position has been clearly laid down in **Environmental Foundation Limited Vs. Central Environmental Authority**,⁹ where Sripavan J held as follows:

“This court would not substitute its discretion for that of the expert, but would interfere with its exercise, if it is sought to be exercised in an arbitrary manner or in matters outside the limits of the discretionary authority conferred by the legislature or on considerations extraneous to those laid down by the legislature. Thus, this court cannot issue a writ of mandamus directing the first respondent to call for an EIAR in respect of the said project. The discretion to call for an EIAR or IEER has to be exercised by the first respondent and by the first respondent only. Any clear departure from the objects of the statute is objectionable and renders the act invalid in law”

⁹ [2006] 3 Sri LR 57.

Useful guidance on how the discretion should be exercised is found in the Sri Lanka Coastal Zone and Coastal Resource Management Plan – 2018 prepared in terms of Section 12(1) of the Act and approved by the Cabinet of Ministers on 25th April 2018, published in Extraordinary Gazette No. 272/58 dated 25th May 2018. Paragraph 6.6 of the said Plan marked '**P9**', having referred to Section 16 of the Act, goes onto state as follows:

“In compliance with the above legal provision, when an application is received for a permit to engage in a development activity within the Coastal Zone, the Director General Coast Conservation and Coastal Resources Management will determine whether such activity requires an EIA or IEE. Although the Director General has discretionary powers, in determining the requirements of an EIA or IEE, the CC&CRMD will consult the CEA where necessary and due consideration will be given to the list of prescribed projects under the NEA. It shall be the duty of the applicant to comply with the relevant requirements.”

The learned President's Counsel for the 7th – 227th Respondents submitted that even though in terms of the Regulations published by the Central Environmental Authority (CEA), a harbour or a port is a prescribed project that requires an EIA to be carried out, the said Regulations do not impose such a requirement in respect of breakwaters and anchorages. He has submitted further that the construction of a harbour or a port is of a much higher magnitude in terms of structures and the utilization of the coast, than an anchorage or a breakwater, and that these are factors that would have been considered by the 1st Respondent in arriving at his decision that an IEE would suffice. This position was supported by the learned Additional Solicitor General who submitted that an EIA is necessary for a project such as the Colombo Port City which involved the reclamation of the sea. He submitted that *it is a judgmental call that the 1st Respondent is required to make depending on the nature of the works vis-à-vis their intervention with the coastal environment.*

The Petitioners have submitted an undated and unsigned four-page report marked '**P7**'. In paragraph 2.1 thereof, referring to the anchorage site, it is acknowledged that, *'This involves the construction o a curved sheltered low energy region and would have minimal impact on the adjacent beaches.'*

Taking into consideration all of the above circumstances, I am of the view that the decision of the 1st Respondent to limit the review of the construction of the anchorage and the breakwaters to an IEE is within his powers and is neither illegal nor unreasonable.

The third argument of the learned President's Counsel for the Petitioners was that there are serious flaws with the IEE, in that those who carried out the IEE have copied certain materials from the Feasibility Study conducted by Lanka Hydraulics Institute Limited. It was the position of the Petitioners that the location of the anchorage and the breakwaters in terms of the Feasibility Study conducted by Lanka Hydraulics Institute Limited is different to the location of the said structures given in the IEE, and for that reason, the failure on the part of those who conducted the IEE to study the behavior of the wave patterns and sand migration amounts to a serious flaw in the IEE. The learned Additional Solicitor General has however submitted that the offshore breakwaters were analysed and studied in 'P5' and that soil erosion due to the construction of the offshore breakwaters have been considered in 'P5'. While it is correct that those who did the IEE have taken material from the Feasibility Study,¹⁰ which in fact has been acknowledged, the fact remains that the overall quality of the IEE is not affected by this. In these circumstances, I am of the view that this is not a ground on which the IEE can be struck down.

The fourth argument of the learned President's Counsel for the Petitioners revolves around the development permit 'P6'. It was pointed out that 'P6' had been issued on 17th December 2019 and was valid for a period of one year. The argument of the Petitioners was that even though the permit expired on 17th December 2020, work on the anchorage continued in the absence of a valid permit. It is correct that the permit expired on 17th December 2020. However, on 17th February 2021 the 1st Respondent has extended the validity period of the license for a further year with effect from 17th December 2020 including the period when the construction took place. There is now in existence a permit valid until 17th December 2021 – vide 'IP26'.

The learned President's Counsel for the Petitioner thereafter referred to Clause 2.6 of 'P6' which reads as follows - *"The Environmental Protection License should be*

¹⁰ Vide Annex II of 'P5'.

obtained from the Central Environmental Authority prior to the commencement of the proposed project.”

It was the submission of the Petitioners that the 3rd Respondent has failed to obtain an EPL and therefore, continuing with the construction is illegal. The permit '**P6**' has been issued for the construction of the anchorage and the breakwaters. Once they are erected, the 3rd Respondent must operate the said anchorage. It is for the operation of the anchorage that the EPL is required from the Central Environmental Authority, to ensure that all environmental requirements during the operation are complied with. To say that an EPL is required for the construction of the anchorage and the breakwaters is not correct. The regulatory authority for all constructions within the coastal zone is the Department of Coast Conservation and Coastal Resource Management. As I have already referred to, in terms of the Act, it is the 1st Respondent, in his capacity as the Director General of the said Department who has been conferred with the power to approve an IEE or EIA. The CEA is not involved with granting approval to carry out development activity within the coastal zone unless the 1st Respondent consults the CEA. Hence, the question of obtaining an EPL from the CEA to carry out any development activity does not arise.

This brings me to the final argument of the learned President's Counsel for the Petitioners. He submitted that the Petitioners apprehend that the anchorage is being constructed for use by operators of multi day boats, which is contrary to the recommendation in the IEE. Soon after this matter was taken up for support, the learned President's Counsel for the Petitioners, without prejudice to the above arguments, submitted that the Petitioners have no objection to the construction of the anchorage if multi day boat operators are not permitted to use the anchorage. Although the Respondents were agreeable to the said resolution, the parties could not agree on the exact scope of a settlement.

I have already adverted to the fact that the construction of the anchorage and the two breakwaters is being carried out to achieve two primary goals. The first is to provide *inter alia* a safe landing site for small boats. The second is to prevent further sea erosion. Whether multi day boats could also be permitted to use the anchorage has been considered in the IEE. In my view, the following conclusion and recommendations in '**P5**' are critical:

“The proposed development Project in Mawella fishery anchorage facility is a felt need of most of the marginal fishing community. Even though it may not provide required services to the Multi day boat owners they are not significant in number. The number of one day boat operators and other small boat operators are much more significant in number and therefore their voice should be given due recognition. The present loss to the one day boat operators and other marginal fishermen is much significant due to frequent damages to their boats during high sea period and also the income they have to forego due to high sea period are significant.

Mawella Bay is recommended as a fishery anchorage facility with limited capacity (anchorage) to service only for the coastal operating crafts since they cannot make safe beach landing during the monsoon. It should not be considered for constructing harbour facilities for multiday operating bigger boats since Mawella Bay is of higher scenic beauty in which beach seine fishing historically operating and also recreational activities such as swimming, surfing and snorkeling for both foreign tourists and the citizens of the country. Further, harbour facilities for multiday boats are available at Kudawella, Nilwella and Tangalle which are located quite close to Mawella.”

While this Court is unaware if any further matters need to be considered if multi day boat operators are to be permitted to use the anchorage facility, one must bear in mind that the decision of the 1st Respondent to accept the IEE and not to proceed with an EIA, as well as issue the Development Permit ‘**P6**’ would have been influenced by the above conclusion and recommendation. In these circumstances, I am of the view that the development activity contemplated by the IEE and for which approval has been granted by ‘**P6**’ does not extend to permitting multi day boat operators to enter and/or anchor at the proposed anchorage.

It is significant that the above position is supported by all Respondents. The learned Additional Solicitor General submitted that several meetings were held with the stakeholders including multi day boat operators during the preparation of the

Feasibility Study Report and the IEE Report, and that the above recommendations were made only thereafter.¹¹

In the written submissions filed on behalf of the 7th – 227th Respondents, it has been submitted as follows:

“As far as intervenient respondents are concerned, they are the owners of traditional boats, oru, wallam sailing and small boats. This anchorage is for them. They are also of the view that multi day boats should not come into the anchorage, for if that happens, the space and facility available for the small boats will be compromised.”¹²

In the above circumstances, I see no legal basis to issue formal notice of this application on the Respondents. This application is accordingly dismissed, without costs, subject to the above finding that the development activity contemplated by the IEE and for which approval has been granted by ‘**P6**’ does not extend to permitting multi day boat operators to enter and/or anchor at the proposed anchorage.

President of the Court of Appeal

Mayadunne Corea, J

I agree

Judge of the Court of Appeal

¹¹ See pages 102 and 103 of ‘P5’.

¹² See paragraphs 45-51 of the intervention petition of the 7th – 227th Respondents and paragraph 10 at page 29 of the Written Submissions of the 7th – 227th Respondents.