

The Eppawela judgement

By Derrick Schokman

The envisaged Eppawela rock phosphate mining project created much controversy as to the fundamental rights of people living in the area and to whether it was the most advantageous way of utilising a critical natural reserve.

A project company (Sarabhoomi Resources (Pvt) Ltd.) was established in Sri Lanka, together with IMC-Agrico and Tomen Corp. of Japan, between them owning 90% of the shares and the Government of Sri Lanka through Lanka Phosphates Ltd. owning the remaining 10%.

Details of the proposed project which would lead to a high intensity mining operation and the export of Di-ammonium phosphate as fertilizer by the project company became known and were highly criticised by the National Academy of Sciences and the National Science Foundation, among others, whose main objections were that the size and quality of the Eppawela phosphate deposit had yet to be properly established, the social and economic disadvantages to be seriously considered, along with the highly adverse environmental impacts that could result.

The controversy came to a head when the government was determined to go ahead with the project despite public opposition.

Bulankulama and six others applied to the Supreme Court claiming an infringement of their fundamental rights. They claimed the project was not a public purpose, but for the benefit of a private company and that it would not bring any substantial economic benefit to the country.

The petitioners also claimed that the government was so heavily committed to the project that no proper unbiased environmental impact assessment would be carried out.

The Respondents were (1) Secretary to the Ministry of Industrial Development (2) BOI (3) Geological Survey and Mines Bureau (4) Central Environmental Authority (5) Project Company Sarabhoomi (Pte) Ltd. (6) Lanka Phosphate Ltd. (7) Another Sri Lankan Company whose exploration and mining licences were to be transferred to the project company and (8) the Attorney General.

The application was heard before Justices Amerasinghe, Wadugodapitiya and Gunesekera. On 2 June 2000 it was unanimously decided in favour of the petitioners and the court directed the respondents to desist from entering into any agreement relating to the Eppawela phosphate deposit prior to carrying out a comprehensive exploration and study of the locations, quantities and quality of the apatite or other phosphate minerals in Sri Lanka by the 3rd respondent (Geological Survey and Mines Bureau) in consideration with the National Academy of Sciences and the National Science Foundation and the publication of the results of the same.

Before entering into any agreement, any project proponent was also required to obtain Central Environmental Authority approval, which approval should be given according to the law including the

decisions of the Supreme Court of Sri Lanka.

Given below are some excerpts from that excellent judgement by Justice Amerasinghe.

Sustainable development

Learned counsel for the 5th and 7th respondents submitted that the project must go ahead because the people would otherwise "starve". In his written submissions, he stated that as the "trustee" of natural resources of the country the government cannot "sit back and do nothing". This would be a sin of omission

million mt. to be mined within 30 years from the date of signing the agreement the petitioners fear (a) existing supplies will be exhausted too quickly (b) that the scale of operation within the stipulated time frame will cause serious environmental harm that would affect their health, safety, livelihood as well as their cultural heritage.

The petitioners do not oppose the utilisation of the phosphate. However they submit that the phosphate deposit is a non-renewable natural resource that should be developed in a prudent manner

However, as a Director of the 5th respondent, Mr. Garry Pigg and a Director of the 7th respondent, Mr. U. F. De Silva Boralessa, state in their affidavits "the actual extent of the phosphate in Sri Lanka is not known today and it would take exploration to discover the new reserve which would move the inferred resources into a proven category".

The Secretary of Ministry of Industrial Development, S. Hulugalle, in his affidavit states that only 26.1 million mt. of rock phosphate will be mined over the entire 30 year period and the deposit contains 25 million mt. proven reserve and 35 million mt. inferred reserve. Therefore, after 30 years, there will still be a substantial amount of phosphate reserve.

The Deputy Solicitor General stated that "the project company will only be entitled to mine 26.1 million mt. for the entire 30 year period. This amount when compared with the available resource at Eppawela is somewhat negligible".

How could it be asserted with any degree of confidence at this time when no exploration has taken place that a comparatively

"negligible" quantity of the available deposits will be extracted, so that at the end of 30 years there would remain a "substantial" amount of phosphate....

The National Academy of Sciences in its report points out that in May 1995 a committee of five scientists and two economists appointed by the President of Sri Lanka recommended that "a more comprehensive geological reserve evaluation be undertaken in the light of recent research findings, so that the government can make a decision on the rate of exploitation of such reserve.

Continued on page 12



and would be as much a breach of trust as it the government did act wrongly...

It has been the policy of successive governments during the past three decades that the Eppawela mineral deposit should be put to use. In fact, Lanka Phosphates Ltd. (6th respondent) under a licence issued by the Geological Survey and Mines Bureau has been mining about 40,000 mt. of rock per annum for crushing and marketing to enterprises making fertilizer.

That modest operation the petitioners claim caused them no concern. However in view of the escalation of the amount of 26.1

in order to strike an equitable balance between the needs of the present and future generations in Sri Lanka...

The call for sustainable development by the petitioners does not mean that further development of the Eppawela deposits should be halted. The government is not being asked, to use learned counsel's phrase to "sit back and do nothing".

According to the Geological Survey and Mines Bureau (3rd respondent), the Eppawela deposit is said to have a proven reserve of 25 million mt. and an inferred reserve of another 35 million mt.